

Child Welfare, Juvenile Justice and the Rights of the Child:
A Socio-Legal Analysis of Life Narratives of
African American Girls and Young Women in the USA

Thesis submitted in accordance with the requirements of the
University of Liverpool for the degree of Doctor in Philosophy

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29 April 2016

ABSTRACT

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In the United States, the child welfare system is designed to address the needs and safety of children and young people who have suffered from abuse or neglect, whilst the juvenile delinquent system is intended to address children and young people for acts generally considered crimes in the adult criminal justice system. African American young women are overrepresented in these systems. The child welfare and juvenile delinquent systems, however, can have ‘messy boundaries’ where they overlap, intermesh and/or have cracks and gaps as children and young people enter, move within and exit them.

There is limited narrative information about African American girls and young women involved in the child welfare and juvenile delinquent systems. The thesis applies qualitative methodology involving interviews that enabled young women to retrospectively reflect on their involvement in these systems. By generating narrative information, the thesis uses narrative inquiry to identify concepts, themes and patterns that emerged from the life narratives of the young women.

Finally, the thesis aims to explore whether the young African American women considered themselves able to meaningfully participate when involved in the child welfare and juvenile delinquent systems. In this light, the thesis considers ‘participation’ as a theoretical and analytical approach and specifically, explores Article 12 of the United Nations Convention on the Rights of the Child as a comprehensive, valuable frame of reference (despite lack of USA ratification) for children’s participation in these systems.

ACKNOWLEDGEMENTS

I would like to express my sincere gratitude to my supervisors, Professor Barry Goldson and Professor Helen Stalford, for their advice, guidance, time and patience. I would like to extend my appreciation to Hannah Southwell, Claire Ball and Oluwatobi Ogunrin who gave me brilliant support in accomplishing this thesis.

DEDICATION

This thesis is dedicated to the young African American women who generously opened their hearts and shared their lives with me. I am privileged to have heard their stories and I hope, through this thesis, I have I honoured them. This thesis is also dedicated to my mom—who is my rock of support.

I'd like to know that your love
Is love I can be sure of
So tell me now `cause I won't ask again
Will you still love me tomorrow?
Will you still love me tomorrow?

The Shirelles, 1960
Carole King and Gerry Goffin, Songwriters
Amy Winehouse, Rendition, 2004

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CHAPTER 1:

Introduction

1.1 Overview

This thesis focuses on the life narratives of young African American women with past involvement in the child welfare and juvenile delinquent systems in Philadelphia, Pennsylvania, United States. Initially, the thesis addresses the overrepresentation of young African American women in these systems and the reasons why ‘disproportionate minority contact’ is such a prevalent and deep-seated problem in America. The thesis then focuses on the routes the young women take into these systems and the extent to which ‘messy boundaries’ arise when both systems are involved. The notion of ‘messy boundaries’ refers to the interplay between these systems, the overlap, intermeshing, cracks and gaps which can appear during a young woman’s journey through the systems. The empirical research for the thesis focused on interviewing young women to explore the nature of their engagement with the systems. This entailed qualitative interviews with 26 young African American women in Philadelphia, who were in the main aged between 18 and 25 years old. The thesis also examines the conceptualisation of ‘participation,’ especially in relation to children and young people involved in the child welfare and juvenile delinquent systems. This part of the thesis contemplates how participation rights¹ under Article 12 of the United Nations Convention on the Rights of the Child, the international human rights treaty, offers a valuable, comprehensive and universal frame of reference against which the young women’s lived experiences and life stories can be measured.

¹ It is acknowledged that Article 12 of this international treaty does not contain the term, ‘participation’ but chapter four addresses the actual treaty language.

1.2 Context of the Thesis

Each year, in Philadelphia alone, nearly 20,000 children and young people become involved with the child welfare system.² Studies suggest that girls and young women are the fastest growing segment of the juvenile delinquent system and that “nearly two-thirds of them are girls of color” (Girls’ Initiative Report, Youth Public Policy Initiative, 2009; 5; Taylor-Thompson, 2006; 1137). There is, however, a noticeable gap in the academic research when it comes to recording first-hand experiences and/or in-depth testimonials from young African American women regarding the nature of their routes through these systems and the underlying reasons for their involvement. The academic literature generally does not explore, based on qualitative interviews, how there are systemic responses to young women during their life journeys or how these responses themselves can exacerbate troubled lives, potentially extending the time young women spend in the systems. There is also only nominal information about how using international human rights standards to explore the young women’s participation might provide insights into how their involvement and contribution to decision making can serve as an effective means of reducing their presence and length of involvement in these systems in the USA.

Given the stark overrepresentation of African American girls and young women involved with both the child welfare and juvenile delinquent systems in Philadelphia, and in the USA more generally, there is also ‘sparse’ qualitative research on their routes through these systems and thus, the service interventions and provisions tailored to meet their needs, safety and rehabilitation (Brubaker and Fox, 2010; 250; Shaffner, 2006). Quantitative studies typically focus on risk profiles and other factors associated with young women’s involvement with the juvenile delinquent system; they do not generally focus on in-depth interviews intended to help make recommendations for improvement (as cited below). A recent quantitative study looking at girls in the juvenile delinquent system used administrative data to focus on “identifying profiles of risk and protection in a pre-dominantly low-income, African American sample of juvenile court-involved female youth and investigating

² The Department of Human Services for the City of Philadelphia publishes the numbers of children and young people involved with the child welfare system. The website is: http://dhs.phila.gov/intranet/pgintrahome_pub.nsf/content/cydhompage.

the relationship between these profiles and later young a++adult outcomes” (Bright et al., 2014). It is noteworthy that this quantitative study relied on statistical information, which correlates with ‘profiles’ and other statistical information pertaining to ‘adult outcomes,’ rather than the actual routes taken through the child welfare and juvenile delinquent systems as described by the young African American women (Ibid.).

There are also quantitative studies which focus on girls and young women in these systems and the impact of ‘poverty’ and ‘maltreatment’ as ‘risk factors’ for gender-specific offending patterns and juvenile delinquent court involvement for girls compared to boys (Bright and Jonson-Reid, 2008). One macro-study reviewed many research studies exploring gender-specific involvement by girls in the juvenile delinquent system and their ‘interconnected troubles’ (Chesney-Lind, Morash and Stevens, 2008). It found that they face trauma, destructive and distraught families, dangerous neighbourhoods and schools, substance abuse, lack of counselling, health issues and/or academic problems (Ibid.; 162-167). The researchers concluded that “overall there is a lack of comprehensive, sustained programming to meet the requirements of girls who are most in need” including the failure to listen to their voices as to “crucial evidence of the resources, interventions, and programs the girls find useful” (Ibid.; 162-167, 183). Whilst this study indicated that girls want a voice and that enabling them to be heard is an effective means of identifying gaps in services and really understanding their needs and desires, it focused on gender-specific solutions (girls want ‘someone to talk to’) rather than how they experienced their routes through the systems (Ibid.; 162-167). The macro-study did not then provide in-depth analysis of the girls’ and young women’s own experiences of having ‘interconnected troubles’ and did not identify specific needs beyond ‘having someone to talk to’ (Ibid.).

Brubaker and Fox showed that providers perceive the main problems of African American girls at risk as being: ‘academic problems/truancy, mental health issues, sexual victimization/sexual promiscuity, dangerous neighbourhoods,’ ‘increased aggression/fighting and interactions with boyfriends who engaged in criminal activity;’ many also mentioned family instability (Brubaker and Fox, 2010; 255). Further research has shown that the ‘typical’ girl involved in the juvenile delinquent

court system in Philadelphia was 'African American' and had a multiplicity of problems, including any number of the following: contact with the child welfare system, an arrest, multiple foster care placements,' a parent with a history of substance use, her own history of running away, substance misuse, at least one commitment to a psychiatric hospital and violent behaviour (Ryder, 2014;³ Taylor-Thompson, 2006; 1141; Simkins and Katz, 2002; 1483; Ambrose and Simkins, Juvenile Law Center, 2001—original study). Whilst these studies are useful in identifying serious, troubling factors in the lives of some young African American women, they do not include insights based on in-depth interviews and testimonials from the young women and thus, do not generally explore how the young women described the underlying basis of their problems or the ways in which these problems had a bearing on their involvement in and routes through the systems. It is important to note, however, that the last study did include interviews with the young women, although its findings relied heavily on the 'typical' girl in the systems; there was analysis about her engagement with the systems given this type of profile (Ibid.).

It is noteworthy that there is a qualitative study that addresses the rising number of girls in the juvenile delinquent system and explores specific contributory factors such as 'juvenile delinquent contact,' 'maltreatment,' 'victimization,' family relationships, neighbourhoods and 'risks' and 'interactions with other systems' (Bright, Ward and Negi Junko, 2011; 37). The researchers provided a short overview of how the research participants described the negative impact of the child welfare system and what they identified as the failures of wider systems (Ibid.). However, the study analysed the qualitative information in order to assess their adult lives, as opposed to exploring what the insights show about the women's routes through the child welfare and juvenile delinquent systems and the reasons for their overrepresentation in those systems (Ibid.).

³ Judith A. Ryder's, *Girls & Violence, Tracing the Roots of Criminal Behavior*, focused on 24 teenage girls who experienced the child welfare system and then were 'remanded to custody for serious violence (robbery or assault) in the juvenile delinquent system. Whilst Ryder published this book in 2014, she used secondary data from interviews conducted in the mid-1990s and related documentation. Whilst her book addresses child development theory and models (including attachment and trauma), it focuses a linear, sequential pattern as opposed to tracing routes of young women most currently involved in these systems which do not neatly follow in this type of pattern.

Another report offers a very small qualitative study focusing on young women and the factors leading to secure detention in order to identify needs upon which to base gender-specific responses (Stanislaus County, Girls Juvenile Justice Initiative, 2010). This study involved in-depth interviews with nine young women (African American, Latina and Caucasian) but did not draw concepts, patterns or themes from the analysis (Ibid.). The study presented the empirical research in percentages, rather than presenting testimonial quotes which would help to understand and contextualise the women's lives (Ibid.).

There is, however, some scholarship about how African American girls and young women manage living in deprived, segregated 'neighbourhoods' and 'schools' in Philadelphia where there is a 'Code of the Street' for dealing with prevalent crime (Jones, 2009; Anderson, 1999). Ness and Jones examine the reasons why young African American girls and women choose to fight as part of their growing up in urban Philadelphia (Ness, 2010; Jones, 2009). There is also scholarship showing how African American adolescent young women in St. Louis are victimised in their interactions with male African American teenagers (Miller, 2008). This study identified serious inequalities between males and females, with girls and young women frequently being subjected to violence and largely being left to fend for themselves (Ibid.). Whilst these are important studies dealing with the lives of young African American women, and make valuable contributions to understanding their environments and how they are affected by living in deprived urban neighbourhoods with significant gun violence, they do not address the interplay between the child welfare and juvenile delinquent systems or the underlying reasons for involvement in the systems.

As stated above, the presence of minority youth in the juvenile delinquent system in the United States is disproportionately high, especially among African American children and young people. Research by Kempf-Leonard demonstrates how disproportionate representation cannot be explained by 'simple comparisons of youth by race,' but require an exploration of 'similarly situated' youth who differ by 'minority status' (Kempf-Leonard, 2007; 71). The study results consistently show the need for a more precise understanding of the 'characteristics of minority status and where they merit attention;' that is, 'the relevance of not merely skin colour' and

'ancestry' but how these relate to 'cultural values, current opportunities and perceptions of group characteristics' (Ibid.; 82). The researchers state that investigation must take context into consideration, including the historical experience of "segregation and discrimination that were reinforced by policies and law" (Ibid.; 76). Given this approach to understanding the overrepresentation of African American children and young people in the child welfare and juvenile delinquent systems, it is important to realise that this situation is reflected at local, state and national levels and is connected to the lived experiences of African Americans both in deprived urban neighbourhoods and in the systems themselves.

This thesis then, aims to build on the prior research, looking specifically at the areas outlined through a contextualised examination of the lives of the research participants. Chapter two sets forth how the contextual history of America, including chattel slavery, established the fundamental underpinnings of the overrepresentation of African American girls and young women in the child welfare and juvenile delinquent systems. It is possible this historical context and its recycled ideologies (beginning with white supremacy and black inferiority) contribute to such overrepresentation. When the USA initiated its juvenile delinquent system at the turn of the 20th century, African American girls and young women were segregated from the primarily Caucasian immigrants from Eastern Europe (Agyepong, 2013; 274; Platt, 1969). The Caucasian girls and young women were perceived as being capable of rehabilitation whereas the African Americans were deemed to have biological traits and features that could not be changed (Agyepong, 2013; 272; Platt, 1969).

The emergence of a child welfare system in the 1920s through Catholic and Jewish charities saw African American girls and young women denied entry on the pretext that they were 'Protestant' (Bernstein, 2001). In reality, this was a rationale for discrimination and oppression (Ibid.). It took a 'class action' lawsuit over '26' years to formally challenge discrimination in the child welfare system in New York and reach a legal settlement (Ibid.). The empirical research focused on urban young African American women and their routes through the systems in Philadelphia. The systems in Philadelphia have a very high percentage of African Americans but as detailed statistics are not available, chapter one seeks to understand the overrepresentation by drawing on statistical information regarding the composition

of the child welfare systems in Chicago and New York. The chapter concludes by setting forth how certain steps in addressing problems in the systems could help to reduce this overrepresentation.

Chapter three outlines the legal architecture of the child welfare and juvenile delinquent systems in Philadelphia under the Juvenile Act of 1972. This state statute primarily focuses on how applicable domestic law addresses children and young people involved with the child welfare and juvenile delinquent systems in Pennsylvania. The aims and objectives of these systems and the main provisions of the statutory law applying to them are then outlined in this chapter. The purpose of describing this is manifold: it establishes the legal approach and framework generally relied upon to address the aims, objectives, definitions, case processing, legal representation, adjudication and disposition in the child welfare and juvenile delinquent systems (Ibid.). It also sets forth the relevant legal mechanisms needed to understand and explore the socio-legal practices and the resulting routes taken through the systems by young African American women (Ibid.).

There is well-regarded academic research showing that entry into the child welfare system can increase the likelihood of involvement in the juvenile delinquent system and lead to a lengthier, deeper penetration into it for those already involved (Bright and Jonson-Reid, 2008; Jonson-Reid, 2004; Jonson-Reid, Barth and Daniels, 2003). Likewise, there are multiple quantitative studies focusing on the ‘crossover systems’ where children and young people have connections with both the child welfare and juvenile delinquent systems (Conger and Ross, 2006; Huang, Ryan and Herz, 2001; Conger and Ross, 2001). However, these studies do not generally rely on actual life narratives as a basis for exploring the nature of young African American women’s lived experiences in the systems (Ibid.).

The socio-legal analysis of state law in chapter three further explores how the systems can potentially be ‘messy’ depending on how discretion is exercised by the court, child welfare agencies, probation department, attorneys and other professionals. There is a consideration of how discretionary decisions can affect young African American women, who may as a result have different stops and starts, movements within and exit routes from these systems. There is recognition too that

these differences can reflect the nuances, subtleties and complexities which accompany lives lived in predominately deprived, segregated neighbourhoods and schools against a backdrop of gun violence, social marginalisation and exclusion.

Chapter four sets forth the United Nations Convention on the Rights of the Child (CRC), and how this treaty provides a valuable, comprehensive and universal frame of reference for supporting ‘participation rights’ under Article 12. This article provides that “children have the right to freely express their views in all matters affecting them, given due weight to their age and maturity,” and it also provides that children have “the opportunity to be heard,” either directly or indirectly, in “judicial and administrative proceedings” (Article 12). Despite the USA not having ratified the CRC, this chapter offers a broad overarching approach that supports ‘participation’ for children and young people in being listened to, taken seriously, respected and contributing to decision making when involved with the child welfare and juvenile delinquent systems. Based on Article 12 and its interpretation contained in General Comment 12, this chapter then explores the concept of ‘participation’ by children and young people in wider literature, especially focusing on models of participation. Specifically, this chapter reviews the ‘participation’ model by Professor Laura Lundy that aligns compatibly with General Comment 12 and how it is valuable for exploring whether adults provided a right to ‘participate’ for the African American girls and young women during their involvement with the child welfare and juvenile delinquent systems.

Chapter five focuses on the qualitative methods used to explore the life narratives of the young African American taking part in the research. From January to April 2014, the empirical research was conducted in a downtown shopping mall where the young women frequently gathered in the food court for a meal and/or to talk with friends. The research participants included 22 young women between the ages of 18 and 25, three 26 year olds and one 28 year old; overall there were 26 participants in this study. At this time, there is a great need for qualitative studies that contextualise how young African American women describe their lived experiences in relation to their routes through and involvement in the systems. It is essential to take account of such lived experiences and the rich, detailed narratives that arise from listening to young women, who are at the heart of the systems. There is a real value in capturing the

small details of their lives in their own voices. The qualitative interviews allowed the young women to describe the complexities and complications surrounding their life journeys in these systems. By telling their life stories, the young women were able to describe their own understandings, thoughts, feelings, viewpoints and opinions, how they characterised their human relationships and perceived themselves. Chapter four also includes the researcher's own reflections on her role as a middle-class Caucasian woman interviewing research participants who are young African American women with backgrounds different from her own.

Chapter six explores the interviews by the young African American women and their testimonials about the reality of engaging in the child welfare and juvenile delinquent systems. As the percentage of African Americans in these systems in Philadelphia is so high, there was not a comparative group of Caucasian women in order to explore any discrepancies in treatment between the two racial groups. Whilst the link between poverty and race is not explicit, in reviewing the representation of African American women in the systems, this chapter does recognise and focus on the reality of poverty in their lives. The young women's life narratives closely reflected overall statistical information and analysis about the African American presence in the systems on local, state and national levels as shown in this chapter. The chapter illustrates how the young women view their family structures and interactions with the child welfare and juvenile delinquent systems; how this information may help to explain the overrepresentation of African Americans in the systems; and how poverty is a main factor in considering their generational histories.

Thereafter, chapter seven explores the empirical research in terms of the child welfare and juvenile delinquent systems, adopting a chronological approach to presenting the life narratives of the young African American women and their routes. This chapter distinguishes between 'children in trouble' with the law and 'troubled children' whilst recognising that the young women's profiles can demonstrate that they are involved simultaneously with both systems. Second, this chapter assesses the data in relation to the aims, objectives and processes of the child welfare and juvenile delinquent systems. There is discussion about how the systemic responses, such as the removal of a child from home, could be perceived by the young women

as being punitive, bureaucratic and non-therapeutic, depending on how professionals managed the situation (although it can be crucial in order to protect a child from immediate danger). Attention is also given to how, in a similar way, the experience of multiple placements in the child welfare or juvenile delinquent systems was also seen as punitive. In both instances, there were young women who perceived themselves as having little or no preparation leading to abrupt transitions, disconnections and removal from family members, friends, neighbourhoods, schools and communities.

The chapter progresses to look at how the young African American women described their kinship bonds with mothers, grandmothers, aunts, other family members and friends, how well they were able to maintain contact with them and whether they were frustrated by systemic responses to them. This part of the chapter assesses the impact of systemic responses and how it can result in trauma which compounds any pre-existing sense of abandonment and isolation arising from experiences of profound loss. These experiences included lacking a secure human attachment to stable primary caregiver or having the attachment disrupted due to the illness or death of the primary caregiver. The chapter explores how the young women described their responses to tragic events such as these and how they dealt with their personal struggles following such wrenching losses. In some instances, the young women described 'acting out' in response to their emotional devastation and sense of loss or abandonment, and how the systems did not appropriately and sensitively acknowledge the impact on their lives. At the same time, the chapter considers instances where young women credited the systems with having managed to restore a sense of stability to their lives through certain types of out-of-home placements and institutionalised care.

Chapter eight explores how the information given in the interviews with the young African American women can be related to the CRC approach and framework, particularly given Article 12, General Comment 12 and Professor Laura Lundy's model. The empirical research was designed to elicit if the young women could 'freely express' themselves and have their views given 'due weight,' as well as whether they had an 'opportunity to be heard' whilst involved in the child welfare and juvenile delinquent systems (Article 12). Specifically, this chapter explores

General Comment 12 and the elements of this model in light of the empirical research. The chapter contemplates the roles of adults and their relationships with young women in the systems in order to assess whether they facilitated child participation by providing safe 'space' where the young women freely expressed their views ('voice'). Consideration is given to whether adults believed the young women and if so, how much confidence, belief and trust was accorded to them. The young women's stories are further explored in order to understand the extent to which adults attempted to build relationships with them and whether the adults in question were appropriately trained practitioners to support and involve them in decision making about their lives.

Given the nature of the adult-child relationships which emerged from the data, this chapter explores General Comment 12 and Lundy's model whereby adults give 'due weight' to the views of girls and young women when making decisions ('audience') and explain final decisions to them with feedback ('influence'). Thus, this chapter considers the empirical research in light of General Comment 12 and Lundy's model and considers how adults can act as proxies in accounting for children; children are also not typically an integral part of the social, legal and procedural fabric in the USA. There is further an examination of the empirical research and how adults justify the marginalisation and exclusion of children, or characterise it in paternalistic terms as a rationale for controlling decision making in the child welfare and juvenile delinquent processes. A review of the data demonstrates how child participation is threatened or undermined rather than instrumentally afforded to children and young people. The chapter concludes by exploring how genuine participation by girls and young women in these systems could potentially reduce their overrepresentation in the child welfare and juvenile delinquent systems and shorten or foreclose on their routes in the systems.

The conclusion forms the last chapter. It sifts through the literature and summarises how the data analysis offers a new contribution to the fields of law, sociology and criminology. The young African American women provided such robust qualitative interviews, detailing their life stories and experiences in the child welfare and juvenile delinquent systems that they contributed significantly to an original body of work which can be used to inform law and public policy in order to make salient

recommendations for reform in these systems. The empirical research is also helpful in understanding poverty, how this can impact young women's routes through the systems and ultimately therefore, how it contributes to their overrepresentation in them. The conclusion also highlights how using qualitative research from young women at the heart of the systems shifts the focus from personnel involved in the child welfare and juvenile delinquent bureaucracies to the voices of young women themselves, particularly regarding Article 12, General Comment 12 and Lundy's model of 'participation.' Hearing directly from them about how they want to be treated when involved in the systems makes a further new contribution to the field. This approach is particularly important where young women are victimized and vulnerable, in addition to being socially marginalised and excluded from the processes.

Whilst personnel are inclined to think they 'know what's best' when it comes to acknowledging, assisting and accommodating young African American women involved in the systems, the empirical research showed that the systemic responses are not always beneficial and in some instances can actually be emotionally damaging for the young women. Moreover, it became apparent that the young women's life stories contain substantial information which could inform how the systems may better serve them, particularly when seen in conjunction with the CRC's recommendations that girls and young women be given a right to participate from the outset, encouraged to contribute to decision making by adults who take them seriously and provided with feedback by adults when there are final decisions made about their lives and destinies.

CHAPTER 2:

Will It Ever End?

Recycled History and Current Traumas Among African Americans Living in Urban Poverty

2.1 Introduction

African American children and young people are significantly overrepresented in the child welfare and juvenile delinquent systems in America. This chapter sets forth the basis for this overrepresentation arising from America's history and its harrowing treatment of African Americans dating back to the time of chattel slavery and ideological notions of white supremacy and black inferiority; concepts which are at times recycled generationally. The chapter then focuses on the context for the empirical investigation of the traumas experienced by young African American women during their childhood and teenage years, especially when involved in the child welfare and juvenile delinquent systems, and how this relates to history and ideologies in the United States.

African American children and young people are represented in foster care and other child welfare placements at a rate of 'more than twice' their percentage in the United States child population (National Juvenile Justice Network, 2013; 1; Models for Change, 2011; 1). In 2012, African American young people "comprised nearly 17% of the U.S. population of youth up to age 18. However, in 2011 black youth made up 34% of the youth who were involved in juvenile justice systems for delinquency offenses" (Juvenile Justice Fact Sheet Series, 2015: 1). Furthermore, the Girls' Initiative Report funded by the Youth Public Policy Initiative showed that "girls are the fastest growing segment of the juvenile delinquent system population" with minority females disproportionately represented (Girls' Initiative Report, Youth Policy Initiative, 2009; 6, 8) Whilst African American girls and young women are a small proportion of the overall juvenile offender population, the number of juvenile court cases involving them increased 74% from 1995 to 2005 (Pennsylvania Commission on Crime and Delinquency, Disproportionate Minority Contact, Conference Presentation, 2008 ('PA Commission, 2008'). African American

children and young people in residential care comprise 67% of the child welfare system and it was recorded in 2006 that African American youth were arrested at a rate of nearly four times that of white youth (PA Commission, 2008).

The overrepresentation of African American girls in the child welfare and juvenile delinquent systems is not new in the United States, although this history is limited compared to that of the 'poor' 'white' 'immigrant' experiences in these systems (Agyepong, 2013; 271). Between 1896 and 1920, African American girls made up 10% to 15% of the population at the Illinois Training School for Girls in Chicago, Illinois" (Agyepong, 2013; 274). Their percentage steadily increased, forming about '20% in 1920 and 35% in 1928,' even though African Americans represented only 1-2% of Illinois' population (Ibid.). In *A Study of Negro Girls to the Geneva State Reformatory*, Joyce Letty Grossberg revealed that although the Census Bureau indicated that African American girls made up 'no more than' 5% of girls in 'Chicago between the ages of fifteen and nineteen,' they comprised a 'staggering' 75% of the Cook County Juvenile Court detainees sent to Geneva between 1937 and 1938" (cited in Agyepong, 2013; 274-275).

2.2 Slavery as Extreme Social Control

Before the Civil War (1861-1865), the primarily 'white,' 'male' southern plantation owners ('masters') enslaved African Americans in a chattel form of slavery in order to get free labour to establish and maintain an agrarian economic system (Messerschmidt, 2007; 77). At the same time, the "white civilized planter woman" (the mistress) represented "the highest level of womanhood: delicate, spiritual, exempt from heavy labour, ensconced in and dedicated to the home" (Ibid; 78). Africans were brought to North America to support the agrarian economy of the South and thus, as slaves they were without "social status, economic, or political power, they could not own property, earn a living for themselves or participate in public or political life" (Ibid.; 77). Further, by "shattering black families (recounted in numerous slave narratives as a traumatic event for parents and children alike)," the white masters "weakened the social positions" of 19th century black children and adults and "their collective prospects for social mobility" (Ward, 2012; 37). During the mid-1800s, the ideology of white supremacy and black inferiority was further

justified by the characterization of African Americans as ceasing development of “skulls and intelligence” at the age of 14 (Ibid.; 40).⁴ So called ‘scientific objectivity’ was also used to prove “by measurement, by microscopes, by analysing the typical negro” that they were “something between a child, a dotard and a beast”⁵ (Ward, 2012; 41). The use of these biological characterisations thus influenced future manifestations of ideologies propagating belief in innate white supremacy and black inferiority.

African Americans have experienced prolonged, repeated and chronic ‘trauma,’ beginning with enslavement whereby the white master (as perpetrator) kept human beings in ‘captivity’ and destroyed their familial and kin relationships (Herman, 1992; 79).⁶ They were held like “prisoners, unable to flee, and under the control of the perpetrator” (Herman, 1992; 75). African American girls or women were ‘victims of sexual abuse’ and ‘barbarous mistreatment’ by white men (Davis, 6; 1981; hooks, 1981). As with domestic violence and rape, the white master could “destroy the victim’s sense of autonomy” including through “scrutiny and control of the victim’s body and bodily functions (sexual threats and violations)” and supervision over “what the victim eats, when she sleeps, when she goes to the toilet, what she wears” (Herman, 1992; 77-78).

Whilst prisoners who “have not been entirely ‘broken’ do not give up the capacity for active engagement with their environments,” it is “increasingly narrowed within confines of the dictator” (Herman, 1992; 90). Moreover, African American slavery constituted “a perpetual, lifelong condition passed on to the next generation” in which “whites established a racial caste system that required a clear racial demarcation between slaves and their masters” (Roberts, 2002; 230). These ideologies and the consequent trauma imposed upon African Americans served to maintain and reinforce a social order that forms the basis of explaining

⁴ Citing Sir Charles Lyell, *A Second Visit to the United States*, 2 vols. (New York: Harper & Bros., 1849), 1:105, quoted in Helper, *Negroland*, 165.

⁵ Citing Fitzhugh, *Sociology for the South*, reproduced in Bremner, ed., *Children and Youth in America* 1:423; William Winwood Read, *Savage America* (1863), 399, quoted in Helper, *Negroland*, 166.

⁶ Professor of Psychiatry, Judith Herman, at Harvard Medical School has written the classic book, ‘*Trauma and Recovery*,’ in which she contemplates trauma including how it applies to slaves, war prisoners, individuals who suffer or have suffered from domestic violence and other groups of people. Whilst she generally discusses trauma, it is predominately in these contexts.

overrepresentation of African American girls and young women in the child welfare and juvenile delinquent systems in the United States today (Ibid.; Agyepong, 2013; Platt, 1969).

2.3 Post-Civil War Reformation and the Jim Crow Justice System as Extreme Social Control

Following the Civil War in the United States, African American former slaves experienced a brief period of freedom as enfranchised citizens in the war torn Southern states. This was during what has come to be referred to as the Reconstruction Period, and it transpired about 1865-1877 (Alexander, 2010; 228-229). Beforehand in 1862, President Lincoln had sought to gain support through a strategy of 'colonization' of black people to Africa, asking why they should not leave the country as they are a 'different race,' their physical difference is a disadvantage to both races and each suffers by a 'presence' living with each other (Ward, 2012; 43).⁷ With four million freed slaves, however, a 'colonization scheme' of emigration amounting to the 'total' removal of African Americans from the USA was untenable and "the development of a new racial order became the consuming passion for most white Southerners" (Alexander, 2010; 28). This arose out of their terrifying fear of a "great insurrection" (Ibid.; 27-28). There was, therefore, felt to be a need for a highly oppressive use of the law in order to ensure white democracy was kept intact (Ibid.). This resulted in extreme racialized social control by: (1) 're-creating and stabilizing white power structures,' (2) 'disenfranchising blacks' and (3) 'reducing their bargaining power for labour through convict leasing schemes' (Ward, 2012; 43, 67).

The re-enactment of legislation, referred to as *Black Codes*, served as an "effective legal mechanism for stripping away newly won freedoms because the laws were so vague that virtually anything could be constructed as a crime" (Ward, 2012; 65). For instance, the use of "vagrancy and other laws, defining activities such as 'mischief' and 'insulting gestures' as crimes were vigorously enforced against blacks" (Alexander, 2010; 31). The 'aggressive' enforcement' of these laws provided a means to capture many African Americans in the criminal justice system whereby

⁷Citing, Adamson, Punishment After Slavery, 566.

black children and adults were contracted out as labourers (Ibid.; Blackmon, 2008). Known as convict leasing, it constituted a means of punishment where individuals convicted of crimes were ‘leased’ to corporations in order to satisfy their sentences and fines (Blackmon, 2008; 55). Unlike slave owners who considered their slaves as a property investment, however, these corporate leaders did not have an interest in caring for the health and well-being of African Americans (Ibid.; 56). They did not own them; they could get additional black children and adults to re-stock their inventory (Ibid.). They maintained a similar power structure as during the times of slavery although it was perhaps worse because the business perceived African American labourers as expendable (Ibid.). Convict leasing started after the Civil War, peaked about 1880 and was generally phased out by 1928 when Alabama ceased using this method of punishment (Ibid.).

Following the Reconstruction Period, Jim Crow laws were enacted by the Southern states in order to racially segregate white and black people by deliberately mandating physical barriers in virtually every sphere of public life, including schools, hotels, restaurants, public toilets, even inter-racial chess games (Alexander, 2010; 34). If the law failed to ensure permanent social and civic exclusion, the use of extra-legal measures could reinforce racial oppression and domination through violent ordeals such as lynching and mob violence; this collective punishment was intended to reduce or remove the status of African Americans (Ward, 2012; 59, 61-62; Alexander, 2010; 30). During this time institutionalized racism inflicted severe trauma, both individually and collectively on African Americans. This could be interpreted as ongoing fear and terror which was “outside range of ordinary emotional experience” and could “overwhelm the ordinary capacity to bear feelings” (Herman, 1992; 42).

2.4 The Early Reformers: Child Saving as Social Control (Late 1880s-Early 1900s)

During the Progressive era (approximately 1890 to 1920), the early reformers addressed entrenched economic and social problems in part by initiating the child-saving movement for wayward children and young people (Trost, 2005; 2). Whilst the distinct roots of the child welfare and juvenile delinquent systems began to

emerge in America, the early reformers relied on 'ideologies' associated with 'Social Darwinism' and 'biological determinism' to justify stratifying wayward children and young people into groups based on race, ethnicity, gender and class (Ibid.). These reformers were generally white middle-class women who embraced Victorian ideals about the morality and sexuality of women, believing them to be 'innately virtuous,' 'innocent,' 'chaste,' 'keepers of sexual mores' and idealizing them as 'wives, mothers and daughters dedicated to the stability of the family' (Kennedy, 2008; 26). From the dominant ideology of the time, 'Social Darwinism,' the early reformers derived their pessimistic views about the "intractability of human nature and the innate moral defects of the lower classes" (Platt, 1969; 18, 36-37). According to Leon Radzinowicz, both biological determinism and natural selection theories automatically justified the "eradication of elements that constituted a permanent and serious danger" (cited in Platt, 1969; 21). The reformers used such ideology in order to determine the type of treatment and punishment (including eligibility for rehabilitation), based on the possession of inbred traits or ones that could be reformed in a group of human beings (Agyepong, 2013). Thus, the young female immigrants from Eastern Europe were regarded as capable of reform, whilst their African American counterparts were perceived as innately defective (Ibid.).

In 1896, the Illinois Training School for Girls opened and admitted African American girls and young women (Ibid.).⁸ The staff packed the black girls into one cottage residence ('Lincoln cottage'), despite vacancies in other cottages, in order to segregate and place them at the school's social margins (Ibid.; 271). The staff reinforced the institution's rationale for segregation and the structured administration of its rehabilitation programs by 'masculinising' the African American girls and portraying them as having an inherent proclivity for violence and aggression and as being more sexually deviant than white girls (Ibid.; 276-277). Essentially, black girls were situated beyond the purview of the school's stated rehabilitative purpose (Ibid.; 277). Staff blamed African American girls for forcefully initiating interracial sexual relationships in order to reinforce the impetus for racial segregation from white girls,

⁸ The book *Girls in Trouble with the Law*, by Laurie Schaffner, does not account for the history of African American girls and young women in the section entitled, 'A History of the Legal System for Girls: Social History as Sexual History.' It is not possible therefore to use the contextual historical material contained therein as part of the basis for exploring the increasing violence by females adjudicated in the juvenile delinquent system.

who could be rehabilitated and learn to conform to a definition of femininity “linked to weakness and strong morality” (Ibid.; 279). It is important to recognise that this kind of dehumanising and cruel treatment where victims are isolated and subjected to inhumane conditions without alternative can potentially result in ‘prolonged, chronic trauma’ (Herman, 1992).⁹

Under the Jim Crow juvenile justice system, however, the African American girls and young women were also the most vulnerable to sexual exploitation, more likely to be labelled as delinquent and faced an increased risk of syphilis, which was the leading cause of death among African Americans at the time (Brice, 2005; 304). There was evidently a lack of protection afforded under the law and possibly a higher risk of exposure to syphilis (Ibid.; 310). The threat of sexual assault and rape, without access to justice to redress it, meant the African American girl or young woman in such an institution was aware of the threat to potentially “terrorize, dominate, and humiliate” her (Ibid.). The basis for these attitudes rested on beliefs that “African Americans and other ‘undesirables,’ would eventually become extinct if diseases and other factors were allowed to run their course without intervention (Ibid.; 303; Radford, 1991; 451).

Further, African American girls and young women could be paroled from a juvenile delinquent institution to a ‘placement’ as a domestic servant for a white family or upon release—provided the white family would take a ‘coloured’ girl, since most did not welcome African Americans (Brice, 2005; 310). If given a ‘placement’ however, the black girls or young women were again extremely vulnerable to sexual advances and ‘undue liberties’ taken by their employers (fathers and sons) and potentially given “a mighty hard time” if they wanted to leave (Ibid.). In 1913, the Juvenile Protection Association of Chicago learned that employment agencies were referring African American girls and young women to work as ‘maids’ in houses of prostitution; a referral which would not have been made for white girls, given their perceived ‘moral fragility’ (Ward, 2012; 111).¹⁰

⁹ It is important to note that Professor Herman distinguishes between ‘traumatic events’ and ‘prolonged, chronic trauma,’ although individuals can experience both.

¹⁰ Quoted in Anne M. Knuper, *Toward a Tenderer Humanity and Nobler Womanhood: African American Women’s Clubs at the Turn of the Century Chicago* (New York: New York University

Whilst the Illinois Industrial School for Girls admitted African American girls and young women, child welfare (dependent) placements were reserved for their white counterparts (Bernstein, 2001). In the late 19th century, care for wayward black children included indenture, orphanages and residence with former slave owners for purposes of farm work or servitude in white homes (Billingsley and Giovannoni, 1972; 38). The private religious agencies predominately gave preference to white Roman Catholic and Jewish children when it came to publicly financed foster care placements, whilst black Protestant children were sent to inadequate if not inhabitable state institutions (Bernstein, 2001). These child welfare agencies discriminated against black Protestant children and young people in order to maintain racial segregation in the system; they did not want white children to 'sleep' alongside black children in the same house, much less have the 'races' intermingle in one family (Billingsley and Giovannoni, 1972; 134; Bernstein, 2001). In 1973, the Children's Aid Society filed a 'class action' lawsuit against 77 agencies and 84 individual defendants alleging that the child welfare system in New York City violated the First and Fourteenth Amendments to the United States Constitution (Bernstein, 2001). This lawsuit alleged discrimination on the basis of separation of church and state against black children and young people who were excluded from this system; the lawsuit lasted 26 years until there was a settlement in 1998 (Ibid.).

From the late 19th century, African American communities, particularly African American Club women, provided placements and services to dependent and delinquent children, but the communities may not have had the funding necessary to afford sufficient placements and services (Billingsley and Giovannoni, 1972; 47-58). Up until the 1950s, however, this was sometimes the only source of service for many African American children and young people as they were largely deserted by wider society (Ibid.). The manifestation of 'ideologies' promulgated by the early reformers based on 'Social Darwinism' and 'biological determinism' provides a backdrop for understanding the overrepresentation of African American girls and young women in

Press, 1996), 41. It is important to note that Professor Herman distinguishes between "traumatic events" and "prolonged, chronic trauma," although individuals can experience both.

¹⁰ Quoted in Anne M. Knuper, *Toward a Tenderer Humanity and Nobler Womanhood: African American Women's Clubs at the Turn of the Century* (Chicago: New York University Press, 1996), 41.

the child welfare and juvenile delinquent systems (Platt, 1969). The stigmas, stereotypes and labels based on race, gender and class continue to be associated with African American girls and young women in these systems. There is a residual prejudice based on historic discrimination which was believed to signify the inferiority of African Americans.

2.5 The Early Reformers: Eugenics as Social Control

The early women reformers borrowed from scientific and medical approaches and 'professionalization' in social work to address the 'root causes of delinquency,' offering 'active intervention and prevention' through the use of medical language, 'diagnosis, categorization, formalization and treatment' of girls and young women in the juvenile delinquent system (Kennedy, 2008; 30-31). The rationale for using these approaches was underpinned by the tenets of Social Darwinism which "sought to encourage the well-born to have children, actively discourage and even prohibit the unfit from having children" (Ibid.; 22). As a result, the early reformers employed strategies designed to prevent young non-white women living in urban areas (the 'unfit') from having children (Ibid.).

Reformers in the child saving movement, such as Jane Addams, maintained close ties to members of the American Breeders Association (established 1903) and members of its Executive Committee, including David Starr Jordan, the Chancellor of Stanford University and member of the Executive Committee on Eugenics (Ibid.; 24). The purpose of this Committee was to examine heredity and to emphasize the importance of 'superior blood' and the menace to society of 'inferior blood' (Ibid.). The founder of Planned Parenthood, Margaret Sanger, was also a member of this committee and an advocate of population control (Ibid.). In 1910, the Carnegie Institute and the Rockefeller Foundation led 'pedigree studies' designed to show how low intelligence passed from the 'feeble-minded' in a 'defective germ plasma' from one generation to the next, and so constituted a threat to the welfare of the nation (Ibid.).

In 1921, the 'North Carolina Federation of Negro Women' founded the 'North Carolina Industrial School for Colored Girls' (also known as 'Efland Home for

Girls’) because of the state’s gross neglect of delinquent African American girls (Brice, 2007; 133). Nevertheless, the girls were often described as ‘feeble-minded’ as a result of scores on the Stanford-Binet Intelligence test (Brice, 2005; 307). These tests were administered during the admissions process and took no account of the fact that the girls may have had very limited access to education and struggled with literacy (Ibid.). In the light of positive screenings for syphilis via the Wasserman blood test, the girls were also regarded as having a limited ability to restrain themselves sexually (Ibid.). Because the Efland Home lacked physical space, the girls and young women living with syphilis were often sent home or to state prisons for treatment—possibly exposing them to further sexual exploitation and stigmatization (Ibid; 307-308.).

In 1927, the United States Supreme Court granted new legitimacy to eugenic sterilization when ruling in the case, Buck v. Bell (275 U.S. 200 (1927)). The majority opinion, written by US Supreme Court Justice Oliver Wendell Holmes, ruled that “a state statute permitting compulsory sterilization of the unfit included the intellectually disabled for the protection of the state and thus, did not violate the Due Process clause of the 14th Amendment to the United States Constitution” (Ibid.; Buck v. Bell, Wikipedia (n.d.) The Free Encyclopedia; Kennedy, 2008; 24-26). After World War II, most states phased out their miscegenation laws, but Virginia, North Carolina and Georgia increasingly applied them to prevent welfare recipients from having children. In these states the practice continued into the 1970s and the reverberations are still felt today (Kennedy, 2008; 26). It is worth noting here that California was the leading state in terms of eugenic sterilization for ‘sexually deviant’ persons (Kennedy, 2008; 26).

Whilst the chattel slavery system encouraged African Americans to ‘breed’ in order to provide free labour, the early reformers and the eugenics movement used a sanitized, clinical approach derived from science and medicine to dehumanize them and justify the use of sterilization procedures to socially control the reproduction of African American girls and young women in an attempt to reduce the African American population. Today, welfare reform laws and policies and the increasing use of mass incarceration of African American men and women may contribute to overrepresentation of African American girls and young women in the child welfare

and juvenile delinquent system, particularly if their mothers cannot meet their basic survival needs (food, shelter, clothing) due to these welfare reforms and/or they are incarcerated and unable to parent their children.

2.6 Present: Ideologies and Overrepresentation of African American Girls and Young Women

2.6.1 The African American Family and the Child Welfare and Juvenile Delinquent Systems

During slavery, African American families were broken up when their members, as 'property,' were traded and put to work, predominately in agricultural production (Billingsley and Giovannoli, 1972; 17). During the late 19th and early 20th centuries, the early reformers in the child welfare movement responded to people of 'different cultures' and their deprived life circumstances, but they "sadly confused the ravages of poverty with notions of inherent and cultural depravity" (Ibid.; 24). Stigma continues to attach itself to situations today where a single black mother is unmarried; there is an absent black father(s) and children born outside marriage (Roberts, 2002; 63). The black family is regarded as fragmented, dysfunctional and a threat to the stability and predictability of a white socially ordered democracy (Roberts, 2002).

Public benefits originated as part of the 'New Deal' programs under President Franklin D. Roosevelt (referred to as 'Aid to Dependent Children') and were designed primarily to support white mothers who were 'not expected to work' (Roberts, 2002; 176). They handed out "paltry, discretionary relief to black mothers who met not only means standards but also degrading morals tests" (Ibid.). At this time and thereafter, black mothers were excluded under discretionary standards if they were unwed and/or did not have 'suitable homes' (Ibid.). In some states, they were provided with 'smaller stipends' based on the belief that 'black people needed less to live on than white people' (Ibid.; 176; citing Lewis, 1998). Thus, it took 'three decades for the civil rights movement to open the welfare system to Blacks' (Ibid.).¹¹

¹¹ Citing also Gordon, *Pitied But Not Entitled*. p. 276

In more recent years, President William Jefferson Clinton used a slogan pledging to “end welfare as we know it,” during his presidential campaign (DeParle, 2004; 102). This sent a message to potential voters which it has been argued, was “designed to raise suspicions about ‘lazy’ black mothers needing to get off the welfare rolls” (Ibid., 2004; 86). A consideration of the contextual history associated with providing public benefits to single mothers with children illustrates how the label of ‘welfare queen’ came into being and was reinforced (Roberts, 2002; 64-67). The irony is that the intention of the ‘Aid to Dependent Children’ program was to allow white mothers to stay home and raise their children, whilst the stereotype of the ‘welfare queen’ is designed to ‘character[ise]’ black mothers for not working (Ibid., 194). The label of ‘welfare queen’ and the interpretation of poverty as personal ‘indolence’ reinforce stereotypes of the black family; the image of the ‘welfare queen’ is she is not only guilty for ‘devastating injury’ upon her children, but also ‘transmitting a deviant lifestyle’ to them (Roberts, 2002; 65, 176; Billingsely and Giovannoli, 1972; 22).

In the child welfare system, the term ‘dependency’ can refer to children and young people who are not adults under the law and who depend on their parent(s) for their ‘physical, mental and emotional health and morals,’ which means partly financial support (Pa. S.C.A. § 6302, et seq). Nevertheless, the definition and how it plays out for a poor couple as opposed to a poor African American single mother can be very different (Roberts, 2002). The single black mother faces an entrenched stereotype about her disposition to work (she is ‘lazy’ if she gets public benefits) (Ibid.; 65, 176; Zucchini, 1999). This stereotype can begin to seem the reality, or at least the expectation, for the African American mother: she is the sole provider of basic necessities for her family and her failure to provide ‘adequate food, clothing, shelter and/or medical’ care for her children can mean the child welfare system deems her as ‘unfit’ to parent her children (Roberts, 2002; 33, 64-67; Ward, 2012; 63-64). Labels such as ‘welfare queen’ can be used to justify reducing and denying public benefits, pushing African American mothers deeper into poverty and thus opening the door for child protective services to intervene because she is deemed an ‘unfit’ parent due to poverty and a lack of basic resources (Roberts, 2002; Zucchini, 1999). In short, the black mother can be punished for her status of being poor (Roberts, 2002; 33).

Today there is also higher likelihood of a black single mother spending time in prison away from her children than in the past. There has been a racial demographic shift in the female prison population, with black women forming a majority by the 1990s and a two-thirds majority by 2000 (McCorkel, 2013; 25, 77). The stereotypes that emerged in the early child saving and eugenics movement, coupled with the racially-strategized creation of the War on Drugs now stigmatize a new type of prisoner as the ‘real criminal’ (the black woman) (Ibid.). In addition, the ‘tough on crime’ positions espoused by politicians have resulted in more punitive technologies of social control (Ibid.; 25). The ‘real criminal’ is characterized like Lombroso’s black female offender, as a different (and supposedly new) breed—‘manipulative,’ ‘predatory,’ ‘aggressive,’ ‘addicted’ and ‘tough’—in contrast with the white girls who are ‘vulnerable,’ ‘innocent’ and ‘suffering’ (Ibid.; 78). Whilst the child welfare system is intended to provide social services and support to meet the needs and safety of children to reunify them with their biological families, the empirical research questioned whether it can become a way station for housing children and young people in this system when their parents and kin are unavailable (Pa.S.C.A § 6302).

The thesis, through its use of retrospective interviews, explores this idea, asking whether the girls viewed living in poverty as a contributing factor to their involvement in the systems. It questions the young women’s involvement in the child welfare and juvenile delinquent systems for transgressions such as stealing which could be related to the need for food or clothing. Moreover, the interviews explore the underlying basis for their mother’s inability to support them and the resulting interventions from the child welfare and/or juvenile delinquent systems.

2.6.2 African American Girls and Young Women in the Child Welfare and Juvenile Delinquent Systems

The thesis focuses on young African American women who had previously been involved with the child welfare and juvenile delinquent systems in Philadelphia and who were discharged by the age of 18 years old or aged out of the system (42 Pa.S.C.A § 6302). As the empirical research explores the profiles of the young women, it examines how the historical context and current status of African

Americans living in poverty have a role in perpetuating highly problematic conditions that lead to continuing to have a generational recycling of involvement in the child welfare and juvenile delinquent systems in America. The empirical research further explores their profiles, their family and kin structures, involvement in the child welfare and juvenile delinquent systems and their routes through them as well as lack of participation when involved. These familial and social structures can serve as a basis for understanding their overrepresentation and continual generational involvement in them.

Research has shown that young people who have experienced a foster care placement in the child welfare system “continue to enter detention at disproportionate rates” (Conger, Ross, 2006; 112). Court officials detain many foster youth at ‘higher rates’ than their non-foster peers arrested on similar (more serious) charges (Ibid.). Detention of a foster care youth may also result from there being no available parent(s), legal custodian or guardian in whose care they can be released, from the prosecutors’ determination regarding the risk of additional offending or from the likelihood of the young person failing to appear before the court (Ibid.; 101, 110).

From the historical context, it is evident that the ‘individual’ and ‘collective’ trauma experienced by African Americans continues to persist today whereby ‘traumatic events’ and ‘prolonged, chronic trauma’ contribute to their overrepresentation in these systems and to generational involvement in the child welfare and juvenile delinquent systems (Herman, 3; 1992). The nuances, complexities and complicated histories of African American girls’ and young women’s lives reflect this and the wrenching effects these have had on them. Such events often include not only alleged or actual child abuse and/or neglect against them by their parents but also from their actual involvement in the child welfare and juvenile delinquent systems. According to a Professor of Clinical Psychiatry at Harvard University Medical School, it is evident that ‘traumatic events’ can “overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning” and the “ordinary human adaptations to life” (Ibid.; 33). Moreover, these traumatic events “breach the attachments of family, friendship, love, and community” and they “destroy the

victim's fundamental assumptions about the safety of the world, the positive value of the self, and the meaningful order of creation" (Ibid.; 51).

Further, some traumatized people "relive the event as though it were continually in the present. They cannot resume the normal course of their lives, for the trauma repeatedly interrupts it. It is as if time stops at the moment of trauma" (Ibid.; 37). There can be 'prolonged, chronic trauma' from living in ongoing traumatic circumstances such as persons living in captivity, which includes slaves, prisoners of war, victims of ongoing domestic violence (and perhaps living in deep poverty with prevalent, random gun violence) (Ibid.). The empirical research, therefore, sought to explore how 'traumatic events' and 'prolonged, chronic trauma' can contribute to overrepresentation of the young women in the child welfare and juvenile delinquent systems as well as have an effect on the nature of their routes through the systems.

Moreover, girls and young women who are traumatised can be 'extremely vulnerable' and can have 'extreme' reactions; they 'lack the experience of healthy relationships' and can use an 'aggress[ive] defence against helplessness' (Simkins and Katz, 2002; 1487). Whether the trauma is competently addressed for girls and young women of colour, reactive behaviour associated with it can be regarded as offending, especially if it is aggressive (Ibid.). If the behaviour of a young woman in the juvenile delinquent system deteriorates and she becomes aggressive, she may face additional charges (Ibid.). This is despite the fact that she is highly 'reactive' due to past 'trauma' and 'victimization' and may need intensive gender-race specific, trauma-informed treatment and services (Ryder, 2014; Taylor-Thompson, 2006; 1140; Simkins and Katz, 2002; 1491-1492).

When considering how the child welfare and/or juvenile delinquent systems may have contributed to the young women's trauma and behaviours arising from it, the empirical research sought to explore how the African American women described the effects on them of their childhood abuse and/or neglect, removal from the home and placement in a foster or kinship care home and/or juvenile delinquent placements. The research also sought to examine the nature of foster care and other care placements, how they served the young women and whether they contributed to their overrepresentation, or length of involvement in the child welfare and/or

juvenile delinquent systems, or influenced the nature of their routes through them. The research explored instances in which young women ‘acted out’ and how the child welfare and/or juvenile delinquent systems responded to them.

The empirical research also sought to determine whether a failed foster care placement (e.g. a girl in the child welfare system being placed in a foster care home, the placement being difficult and the girl running away) would result in her staying in the child welfare system or engaged with the juvenile delinquent system (Taylor-Thompson, 2006; 1145). The literature indicates such a young woman could be involved with the child welfare system as a ‘runaway’ or she could potentially be held in contempt for ‘violating the court order,’ ‘re-classified as a delinquent’ and moved into the juvenile delinquent system (Ibid; 1146.). Questions posed to the interviewees in this study thus sought to explore the basis for the young women’s systemic involvement, including whether multiple placements and transitions compounded her trauma, particularly where there was ‘destruction of attachments’ and ‘potentially isolation of the victim from others’ (Herman, 1992; 80). Even interventions designed to help young women cannot necessarily get to “the source of the psychological and emotional trauma” and provide a “continuity of services that recognizes the depth of damage that the abusive environment may have caused” (Taylor-Thompson, 2006; 1147). Therefore the empirical research considered, even within the child welfare and juvenile delinquent systems then, young women may not receive sufficient, tailored social services and rehabilitation interventions and services—a reality which may lengthen their time spent in the systems and consequently contribute to the issue of overrepresentation.

The empirical research also considered the question of why some of the young women transcended the trauma of child abuse and neglect and involvement in the child welfare and/or juvenile delinquent systems, whilst others struggled with it, some experiencing devastation and terrible consequences such as transfer to the adult criminal justice and corrections systems or relying on homeless shelters. In general, according to Professor Herman, ‘recovery (from trauma) unfolds in three stages:’ (1) the ‘establishment of safety,’ (2) the ‘remembrance and mourning (of a past life)’ and (3) the ‘reconnection with ‘ordinary’ life (Herman, 1992; 155). These stages are not intended ‘to be taken too literally,’ as the process is ‘inherently turbulent and

complex' and 'no single course of recovery follows these stages through a straightforward linear sequence' (Ibid.). Professor Herman states that there can be a course of gradual recovery from "unpredictable danger to reliable safety, from dissociated trauma to acknowledged memory, and from stigmatized isolation to restored social connection" (Ibid.). For many women, however, the less than ideal realities of life can interfere with these stages. It is understandably difficult for example, to feel safe or 'connect with the ordinary' when living in a highly deprived neighborhood with unpredictable gun violence and premature loss of family and friends (Ibid.). Consequently, the empirical research considers how young women living in just such environments can suffer from ongoing trauma and devastating events and thus struggle to forge new and/or restore meaningful connections and relationships where overall, they are lacking in resources needed to therapeutically process trauma (partly attributed to its omnipresent nature).

The study aimed to encourage the African American women to describe the impact of the child welfare and juvenile delinquent systems on their lives and to pay particular attention to how they portrayed themselves as 'coping' with their trauma and past experiences (Walklate, 2011). The research further sought to understand the nature of their connections and relationships and how these may have contributed to their 'survival,' 'coping' strategies and 'resilience' during their childhood and teenage years (Ibid.). In addition to looking at questions of overrepresentation and routes taken through the systems, the study was also designed to assess their ability to establish and live productive, rewarding lives.

2.6.3 The Urban Ghetto and the New Jim Crow Justice System

People living in poor, segregated urban communities are exposed to heightened police scrutiny and surveillance in their neighbourhoods and schools, know many people involved adult criminal justice system (if not themselves) and are commonly aware of family members and friends rotating through the prison system on a regular basis (Goffman, 2014; McCorkel, 2013; Alexander, 2010). The continuous police presence in their communities may make them more likely to have involvement in the juvenile delinquent system (Ibid.). As the empirical research shall show, there is also a higher likelihood of involvement in the child welfare and juvenile delinquent

systems when a parent is removed from the community and incarcerated as their removal may necessitate their children entering the child welfare system.

For people in such areas, possibly the most pressing survival issue, after getting basic needs met, rests on using the ‘Code of the Street’ to protect themselves in what are often highly dangerous and distressed neighbourhoods. For young people, the importance of this Code also applies to the schools in these areas (Jones, 2009; Miller, 2008; Anderson, 1999). The ‘Code of the Street’ refers to a form of street justice that serves as the means for surviving the brutality of these areas by use of multiple strategies to manage threats of interpersonal and gender-race specific violence (Jones, 2009; Anderson, 1999). Another important study focuses on the systemic understanding about how extreme urban disadvantage is a basis for explaining the nature of gendered-violence and victimisation of African American girls and young women in their highly segregated, deprived and distressed neighbourhoods and schools (Miller, 2008). Research tells us that the high level of exposure to violence in these urban ghettos can lead to violence against African American girls and women being normalised, a problem which is compounded by a lack of collective efficacy and law enforcement (Miller, 2008; Schaffner, 2006; 130).

Scholars have also emphasized that girls and women of colour use violence to protect themselves and to survive the inner-city experience in these neighbourhoods and schools where levels of gendered-violence are higher than the norm of other classes (Ness, 2010; Jones, 2009; Miller, 2008). The need to survive their urban environment (both neighbourhoods and schools) can mean constant vigilance and readiness to act against ‘threats’- a readiness that may sometimes lead to criminal behaviour (Jones, 2009). The rationale used here is that due to economic marginality and growing up in violent ‘disorganized’ communities, girls learn at an early age to use aggression and violence in order to survive their harsh and demanding environments (Marakios, 2007; 104, 112; Simkins, 2002). Given that the young women live in these environments and experience traumatic events and/or suffer from chronic trauma (such as from living with unpredictable gun violence), they can be in a constant “state of alert” living with danger and threats of serious harm or death on a daily basis (Herman, 1992; 33). Thus, the study sought to question the

basis for their acts of aggression and the impact of dealing with an environment which demands lightning responses to even slightly provoking events. Given that it is not unusual for such responses to result in violence, the study sought to examine variable links between this reality and the overrepresentation of African American girls in the systems.

Whilst child welfare interventions and services can address prevalent family ‘dysfunctions,’ the risk and experience of violence exists widely, beyond the family (Roberts, 2002). There is a double-bind given that ‘rehabilitating’ the parent (including addressing parental supervision) is not necessarily a complete answer to the problem (Ibid.). No parent is omniscient and, particularly for parents of teenagers, it is just not feasible to supervise their children in all circumstances, regardless of child welfare system interventions and services (Jones, 2009). Their daughters must fend for themselves in the community, learning to ensure their own safety (Ibid.). In doing so, they necessarily associate with persons from outside the family, and these could victimise or protect them (Ibid.). Given such unpredictable dynamics, young women learn to rely on themselves for protection and sometimes engage in violence to meet their needs and safety (Ibid.). The urban ghetto, therefore, often carries an ominous sense of ‘hazard’ and physically brutal violence which can be entrenched in drug and gang activities associated with different territories (Ibid.).

2.7 Conclusion

There are local, state and federal government and non-profit publications as well as academic literature documenting the overrepresentation of African American girls and young women in the child welfare and juvenile delinquent system today. During slavery, African Americans were dehumanised, denied ‘identity’ and ‘liberty,’ had their families broken up, were held in captivity, treated as ‘property’ and used as a source of free labour (Ward, 2012; Alexander, 2010). As we have seen, this treatment was rationalised through an ideology which presented the African American as possessed of ‘innate’ character traits for ‘criminality’ (Ward, 2012). The message conveyed, therefore, was that African Americans posed a danger and were a threat to the maintenance of a civilized, reasonable, rationale society (Ibid.). Today, we still see the residual effects of the Post-Civil War period and the Jim

Crow justice system in the use of 'legal mechanisms' which reinforce racial and gender oppression of African Americans (Ward, 2012; Alexander, 2010).

As stated in the literature, the early child reformers reinforced prejudiced 'ideologies' through their notions about how white girls and young women (including 'immigrants') could be rehabilitated to become 'feminine' 'ladies,' whereas African American girls and women were deemed to be innately 'masculine,' 'aggress[ive]' and 'violen[t],' 'hypersexual' and unintelligent (Agyepong, 280-281; 2013; Kennedy, 289; 2008; Brice, 2005; 307; Platt, 1969). The early reformers based their scientific and medical approaches on tenets of 'natural selection' and 'biological determinism' in order to exert social control over African American girls and young women, even going so far as to employ methods such as sterilization to reduce or stop reproduction among the 'feeble-minded' or intellectually disabled population (Ibid.; Buck v. Bell, 275 US 200 (1927)).

The current situation becomes more problematic as the labels inferring innate character traits for criminality continue to emerge and begin to stick to African Americans such as 'welfare queen' or 'real criminal' and thus, thereby are used as a justification in explaining their urban poverty and isolation and even worse, to rationalize the need for mass incarceration (McCorkel, 2013; Alexander, 2010). It is also a way to dehumanise a group of people and contributes to the overrepresentation of African Americans in the child welfare and juvenile delinquent systems (Ibid.). The parents can be, thus, associated with 'real criminality' and this 'label' is often passed down to the children, who having spent so much of their childhood witnessing poverty, crime and the resulting affiliations, are often unable to extricate themselves from the cycle (Ibid.).

As will be discussed, the empirical research suggests that significant numbers of African American girls and young women are growing up in a world where their familial, kin and friendship attachments and relationships can be disrupted by removals from the home due to interventions by the child welfare, juvenile delinquent or adult criminal justice systems. At the same time, these African American girls and young women are enduring the urban ghetto with highly deprived living conditions and its social marginalisation, exclusion and isolation

from mainstream America, none of which encourage or nurture human development towards productive and rewarding lives (Jones, 2009). Instead, it is likely that they are experiencing a level of distress which brings with it the inability to concentrate and learn (compounded by underfunded schools where the need to fend for survival is high) (Herman, 1992). These young women contend with an overwhelming amount of 'trauma' on a daily basis exacerbated by external forces (Ibid.).

As social and economic deprivation worsens, it is likely that the number of African American girls and young women in the child welfare and juvenile delinquent systems will increase, as the empirical research shall discuss. It is deduced that the harder it gets for them to survive in the urban ghetto, the more likely it is that they enter, move within and exit through the child welfare and juvenile delinquent systems. There can be a depressing sense of futility in the face of such deeply embedded problems, particularly given that these girls and young women live with such high levels of exposure to violence and exploitation, and that premature death is a prevalent part of their landscape as explained by the empirical research.

In order to attempt to fully understand the overrepresentation of African American girls and young women in the systems, it is necessary to consider the legal architecture of today's child welfare and juvenile delinquent systems. By setting forth the legal approach and framework of these systems in the context of one city, Philadelphia, the next chapter is designed to explore and analyse the sociological and criminological underpinnings of these systems and how African American girls and young women experience them. In this way, the chapter offers the opportunity to examine on a micro-level areas where decision making processes and the use of discretion may reveal bias when deciding whether the needs, safety and/or rehabilitation of African American girls and young women involved in the child welfare and juvenile delinquent systems are met.

CHAPTER THREE:

The Legal Architecture and the Discretionary Leeway in the Child Welfare and Juvenile Delinquent Systems in Pennsylvania

This chapter is designed to set forth the Juvenile Act of 1972¹² which provides the legal approach and framework for the juvenile dependency (child welfare) and juvenile delinquent (youth offending) systems in Pennsylvania (42 Pa.S.C.A §6301, et seq.). The major components of the systems are examined, including aims and objectives, definitions of dependent and delinquent children, legal representation, case processing, adjudication and disposition. Beyond state statutory law, this chapter seeks to explore actual socio-legal practices and the interplay among child welfare, juvenile delinquent and ‘crossover’ systems. It seeks to identify how they can shed light on notions of ‘messy boundaries,’ especially given discretion and decision making by the court, the probation department and the child welfare agency.

3.1 Juvenile Dependency System

3.1.1 Aims and Objectives

In Pennsylvania, the juvenile dependency court seeks to “provide for the care, protection, safety and wholesome mental and physical development” of children and young people who have suffered child abuse and/or neglect under the Juvenile Act (42 Pa.C.S.A § 6301(b)(1.1)). The Act holds family preservation at the forefront of its practice wherever possible (42 Pa.C.S.A § 6301(b)(1)). If family reunification is not possible, the juvenile dependency system seeks to provide an “alternative” family through adoption, permanent legal custody, living with a fit and willing relative or an alternative living arrangement (42 Pa.C.S.A § 6301(b)(1)).

¹² Most Pennsylvania statutory law is codified into the statutory codes annotated. The Juvenile Act is codified at 42 Pa.S.C.A § 6301 - § 6375 (et seq.). Since 1972, the state legislature has amended this statute and the governor has signed it into law on occasion. The statute pertains to both the juvenile dependency and juvenile delinquent systems in one piece of state legislation.

3.1.2 Definition of Child and Dependent Child

Under the Juvenile Act, the definition of a dependent child refers to a child who is: “(1) without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, or morals; (2) placed for care or adoption in violation of the law; (3) abandoned by the parent(s), guardian or other legal custodian; (4) without a parent(s), guardian or legal custodian;” (5) “habitually and without justification truant from school;” (6) “ungovernable¹³ and in need of care, treatment and services;” (7) “under the age of ten years” and “has committed a delinquent act;” (8) “formerly adjudicated dependent and is under the jurisdiction of the court,” and ungovernable; (9) was “referred” to “informal adjustment” (described below) from the probation department and is ungovernable; (10) “born to a parent whose parental rights with regard to another child have been involuntarily terminated within three years immediately preceding” the child’s birthdate and “the parent(s)’ further conduct poses a risk to the health, safety or welfare of the child” (42 Pa.C.S.A § 6302(1)-(10)).

3.1.3 Legal Representation for the Child

When a dependent judicial proceeding “has been initiated alleging that the child is dependent under paragraph (1), (2), (3), (4) or (10), the court shall appoint a guardian ad litem to represent the legal interests and the best interests of the child” (42 Pa.C.S.A § 6311(a)). The “guardian ad litem must be an attorney at law” and “charged with representation at every stage of the proceedings” (42 Pa.C.S.A § 6311(a),(b)). The attorney “must meet with the child as soon as possible following appointment” and “on a regular basis” in a “manner appropriate to the child’s age and maturity” (among several statutorily mandated powers and duties under the Juvenile Act) (42 Pa.C.S.A § 6311(b)).

The statutory ‘powers’ and ‘duties’ of the guardian ad litem include “presenting” and “cross-examin[ing]” witnesses and evidence in order to “protect the best interests of

¹³ The term ‘ungovernable’ is defined within this provision as having “committed specific act(s) of habitual disobedience of reasonable and lawful commands of the parent(s), guardian or custodian.”

the child” (42 Pa.C.S.A § 6311(b)(5)). These ‘powers’ and ‘duties’ of the guardian ad litem include making specific recommendations to the court relating to: (1) the “appropriateness and safety of the child's placement and services necessary to address the child's needs and safety;” (2) explaining “the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition” and (3) advising “the court of the child's wishes, to the extent that they can be ascertained,” and (4) presenting “to the court whatever evidence exists to support the child's wishes” (42 Pa.C.S.A § 6311(a),(b)(7)-(9)).

“When appropriate, given the age or mental and emotional condition of the child, the guardian ad litem shall determine to the fullest extent possible the wishes of the child and communicate this information to the court” (42 Pa.C.S.A § 6311(b)(9)). “A difference between the child's wishes” and the best interests of the child shall “*not* be considered a conflict of interest for the guardian ad litem” under state statutory law in Pennsylvania (the Juvenile Act) (42 Pa.C.S.A § 6311(b)(9)).

3.1.4 Case Processing

In emergency circumstances, the child welfare county agency shall take a child or young person into emergency protective custody as per a court order by “removing the child from the home of a parent(s), guardian or custodian” (42 Pa.C.S.A § 6324(1)). The “shelter care” hearing must occur within “72 hours” of taking a child into emergency out-of-home placement (42 Pa.C.S.A § 6332(a)). The court must determine whether allowing “the child to remain in the home” is “contrary to the welfare of the child” in order to continue an out-of-home placement (42 Pa.C.S.A § 6332(a)). The court shall also “determine whether ‘reasonable efforts’ were made” by the county child welfare agency “to prevent such placement or, in the case of emergency placement, whether services were not offered which could have prevented the necessity of placement,” and “whether such a level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family” (42 Pa.C.S.A § 6332(a)).

3.1.5 Adjudication

There is an adjudicatory hearing whereby the court, “[a]fter hearing the evidence on the [dependent] petition, shall make and file its findings as to whether the child is a dependent child” (42 Pa.C.S.A § 6341). The judge must make a ‘finding[s]’ of dependency at the adjudicatory hearing regardless of whether the parties and counsel agreed in the Pre-Hearing Report as to adjudicating the child as dependent; the finding of dependency must be made for each parent by “clear and convincing evidence” (42 Pa.C.S.A §§ 6302, 6341(c)). If the court has previously determined that aggravated circumstances exist, then it determines if no new or additional “reasonable efforts” to “prevent or eliminate the need for removing the child from the home or to preserve and reunify the family” are required (42 Pa.C.S.A §§ 6335, 6341(c)(1)). Aggravated circumstances refers to “unknown” parents, parents who do not claim a child within “six months,” parents who commit severe physical abuse, neglect and/or sexual violence upon a child or have been convicted of “homicide,” or “aggravated assault,” sexual offenses and/or “attempt, solicitation or conspiracy to commit such offenses” (42 Pa.C.S.A § 6302(1)(i)-(iii)). In the time pending any proceeding, the court may further order that “the child be examined at a suitable place by a physician or psychologist” (42 Pa.C.S.A § 6339(b)). The court may also order “medical or surgical treatment of a child who is suffering from a serious physical condition or illness which, in the opinion of a licensed physician, requires prompt treatment, even if the parent(s), guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment” (Ibid.).

3.1.6 Disposition/Permanency/Review Hearings

Where a child is adjudicated dependent, the court shall make orders “best suited to the safety, protection and physical, mental and moral welfare of the child” (42 Pa.C.S.A § 6351(a)). The court shall decide the disposition of the case at the adjudicatory hearing or at a court hearing not more than “20 days” later (42 Pa.C.S.A § 6341(c)). The court shall further determine matters at the permanency hearing regarding: (1) the “continuing necessity for the appropriateness of the placement,”

(2) “the appropriateness, feasibility and extent of compliance with the permanency plan developed for the child,” (3) the “extent of progress made toward alleviating the circumstances which necessitated the original placement,” (4) the “appropriateness and feasibility of the current placement goal for the child,” (5) the “likely date by which the placement goal for the child might be achieved,” (6) “[w]hether reasonable efforts were made to finalize the permanency plan in effect” and (7) “whether the child is safe,” the “services needed to assist a child who is 16 years of age or older to transition to independent living” (42 Pa.C.S.A. § 6351(f)-(g)).

In the juvenile dependency court, the county child welfare agency must have set forth a Family Service Plan (“permanency plan”), which shows the objectives for the child in out-of-home placement and the parent(s), guardian and/or custodian in order to reunify the family and/or for find another “permanent” home for the child (42 Pa.C.S.A. §6301(1)). In this instance, the court shall conduct a permanency hearing for the purpose of: (1) “determining or reviewing the permanency plan of the child,” (2) setting “the date by which the goal of permanency for the child might be achieved” and (3) deciding “whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child” (42 Pa.C.S.A. § 6351(e)(1)). Under the Juvenile Act pursuant to the Federal Adoption and Safe Families Act of 1997 (ASFA), there are five specific permanency goals whereby the court shall make a ‘determination’ as to the disposition of the child in order to identify a permanent home that is “best suited to the safety, protection and physical, mental and moral welfare of the child” (42 Pa.C.S.A. § 6351(f.1); 42 U.S.C. § 671 et seq.). Initially, the court shall determine if and when the child will be “returned to the parent(s), guardian or custodian” where family reunification meets the “best suited” standard (42 Pa. C.S.A. § 6351(f)(9)). If the child has not returned to the family “between 15 to 22 months” of an out-of-home placement, the county agency must file a ‘termination of parental rights petition’ under ASFA unless it can be shown there is a “compelling reason” not to proceed with filing (42 Pa.C.S.A. § 6351(f)(9); 42 U.S.C. § 671 et seq.).

In ‘any permanency hearing held with respect to the child,’ “the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity” (42 Pa.C.S.A. § 6351(e)(1)). “If the court does not consult

personally with the child, the court shall ensure that the views of the child regarding the permanency plan” (to reunify the family and/or an alternative permanent home) “have been ascertained to the fullest extent possible and communicated to the court by the guardian ad litem” or, as appropriate to the circumstances of the case, by the child's counsel, the court-appointed special advocate or other person as designated by the court” (Ibid.).

The court shall consider whether the child should be placed for adoption and “the county agency shall file for termination of parental rights” when the child cannot reunify with the family (42 Pa.C.S.A § 6351(f.1)(2)). Given that family reunification and adoption are not options, the court may consider ‘if and when’ the child will be placed with a “legal custodian” (42 Pa.C.S.A § 6351(f.1)(3)). If these three options cannot be “best suited” to the child, then the child shall be placed with “a fit and willing relative” (42 Pa.C.S.A § 6351(f.1)(4)). Last, the court may consider a fifth option where an alternative ‘living arrangement’ would be intended as permanent in nature and there is a “compelling reason” why the other options would not be “best suited” for the child (42 Pa.C.S.A § 6351(f.1)(5)). Moreover, if the ‘termination of parental rights hearing’ is contested, the attorney for the county child welfare agency must prove at least one of the statutory grounds for ‘involuntary termination’ of parental rights by ‘clear and convincing’ evidence that the parent(s) have failed to meet their obligations for raising a child or young person (23 Pa.C.S.A § 2511(a)). The guardian ad litem should also be present and provide a recommendation (Ibid.). In addition, this state statute requires the court to give “primary consideration to the development, physical and emotional needs and welfare of the child,” when deciding to terminate the parent(s)’ parental rights (23 Pa.C.S.A § 2511(b)).

3.2 Juvenile Delinquent System

3.2.1 Aims and Objectives

Pennsylvania’s juvenile delinquent court seeks to provide young people who commit delinquent acts with programs of “supervision, care and rehabilitation” under the Juvenile Act and in consistency with the “protection” of the “public interest” (42 Pa.C.S.A § 6301(b)(2)). This state statute provides that the juvenile delinquent

system give: (1) “balanced attention” to community protection, (2) “accountability” for offenses committed and (3) “development of competencies” for children to develop and “become responsible, productive” community members (42 Pa.C.S.A § 6301(b)(2)). In addition, there are federal constitutional rights and safeguards including due process rights afforded to children and young persons involved in the juvenile delinquent system as described in the next sections (In re: Gault, 387 US 1 (1967); In re: Winship, 397 US 358 (1970), In re Winship, Wikipedia (n.d.), The Free Library).

3.2.2 Definition of Child and Delinquent Child

The Juvenile Act defines a “delinquent child” as a child who is found to have committed a “delinquent act” and to be in need of “treatment and rehabilitation” (42 Pa.C.S.A § 6302). As stated above, a child below this age threshold has his or her case processed in juvenile dependency court (42 Pa.C.S.A § 6302). A “delinquent act” refers to “an act designated as a crime under the law of this Commonwealth” (the state of Pennsylvania), another state or federal law or local ordinance” (42 Pa.C.S.A § 6302(1)).

It is worth noting that the definition of “delinquent act” does not apply to any child who has, or is alleged to have committed “the crime of murder;” this child is automatically transferred to an adult criminal court regardless of age (42 Pa.C.S.A § 6302(2)(i)). Further, a “delinquent act” does not apply given these three criteria: (1) a deadly weapon was used when committing an alleged offense, (2) the child was “15 years old or older” and (3) the offense related to “voluntary manslaughter,” “aggravated assault,” arson,” “involuntary deviate sexual intercourse,” “kidnapping,” “rape,” “robbery,” “robbery of the motor vehicle,” or “attempt, solicitation or conspiracy to commit any of these offenses” (42 Pa.C.S.A §§ 6302, 6307(b)).

3.2.3 Legal Representation for the Child

Whilst the appointment of counsel is “not mandatory” at the time of an “intake conference” conducted by a “juvenile probation officer following submission of written allegation[s],” the child is entitled to counsel at every stage in the juvenile

delinquent court proceedings (42 Pa.C.S.A § 6337.1(b)(2)). In delinquency cases, “all children shall be presumed indigent” (42 Pa.C.S.A. §6337.1(b)(1)). If a child “appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing” (42 Pa.C.S.A § 6337.1(b)(1)). The “presumption that a child is indigent may be rebutted if the court ascertains that the child has the financial resources to retain counsel of his choice at his own expense” (Ibid.). The “court may not consider the financial resources of the child's parent, guardian or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense” (Ibid.). A “child who is 14 years of age or older may waive the right to counsel if the court determines by colloquy that the waiver is knowingly, intelligently and voluntarily made after colloquy with the child on the record” (42 Pa.C.S.A § 6337.1(b)(3)). There is no waiver of counsel for “the delinquent detention hearing,” the “transfer” hearing to “criminal proceedings hearing,” the hearing as to the evidence regarding the “child’s need for treatment, supervision and rehabilitation” and the delinquent “adjudication” and “disposition” hearings (42 Pa.C.S.A § 6337.1(b)(3)(i)-(iv)). The “court may assign stand-by counsel if the child waives counsel at any of these [delinquent] hearings” (42 Pa.C.S.A § 6337.1(b)(4)). Waiver by the child “only applies to that hearing;” the child may “revoke the waiver of counsel at any time” and the child shall be again informed of the right to counsel at each subsequent hearing (42 Pa.C.S.A § 6337.1(b)(5)).

In terms of criminal proceedings, the United States Supreme Court has also granted procedural due process rights, similar to those of adults, to children and young people in some circumstances (In re Gault, 387 US (1967)). In the case, In re: Gault, the US Supreme Court held that juveniles “accused of a crime” are “afforded some of the same due process rights as adults” (Ibid.; In re Gault, Wikipedia, The Free Dictionary (n.d.)). These include the right to timely notification of charges, the right to confront witnesses, the right to counsel and the right against self-incrimination under the Equal Protection Clause of the Fourteenth Amendment of the US Constitution (Ibid.). Further, the US Supreme Court ruled that “each element of an offense must be proved beyond a reasonable doubt for juveniles charged with an act that would be considered a crime if committed by an adult” (In re: Winship, 397 US 358 (1970); In re: Winship, Wikipedia (n.d.) The Free Encyclopedia).

3.2.4 Case Processing

A law enforcement officer can make an arrest “without a search warrant” or pursuant to the court issuing an arrest warrant of a child or young person; there must further be 24-hour “availability” to obtain an arrest warrant from a “judge” (Pa.R.J.C.P. 200, 210). The “application for an arrest warrant” must contain “written allegation[s] supported by a probable cause affidavit” to the presiding judge (Pa.R.J.C.P. 210(a)). Under the Juvenile Act, a court may then issue an arrest warrant “if it appears from the [probable cause] affidavit filed or from sworn testimony before the court that the conduct, condition, surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of court or will not be brought before the court” (42 Pa.C.S.A § 6335(c)).

If law enforcement decides to bring the child to the police station or juvenile processing centre, then he or she must provide: (1) notification to the “juvenile’s guardian” regarding the “arrest,” (2) the “reason[s] for arrest” and (3) the “juvenile’s whereabouts” (Pa.R.J.C.P. 220). Further, the arresting officer must: (1) “release the juvenile to his or her guardian,” (2) “deliver” the young person before the court to a “detention facility” or (3) “medical facility” if the young person is believed to suffer from “a physical condition or illness requiring treatment” (Pa.R.J.C.P. 200, 210). In addition, an arresting authority shall ensure that the “fingerprints and photographs” of an “adjudicated” delinquent youth have been taken by the arresting authority (42 Pa.C.S.A § 6308(c)). In “all cases,” the person arresting the young person shall “promptly” “submit written allegation[s] as required by Pa.R.J.C.P. 231(B).

Upon commencing a case proceeding, the person arresting the young person (“law enforcement”) shall “promptly” “submit written allegation[s]” to “the juvenile probation office” and forward “a copy to the prosecutor” (unless the district attorney elects to require “initial receipt and approval with filing to the court”) as required by the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P. 231(A)(2)). The written allegation procedures must contain: (1): the “name of the person making the allegation[s],” (2) “the name, date of birth and address” of the young person “if known” and (3) the “date when the alleged offense[s] [were] committed” (including

a “summary of facts” and the provisions of law) or certification that the juvenile “failed to comply with a sentence imposed for a summary offense” (Pa. R.J.C.P. 200, 232). In addition, the statements alleging acts must set forth that: (1) they were committed “against the peace and dignity of the Commonwealth” or “in violation of a local ordinance,” (2) the ‘proceedings’ in the matter are “in the best interest of the juvenile and the public” and (3) “the juvenile is in need of treatment, supervision or rehabilitation” (Pa. R.J.C.P 232).

The probation officer is then empowered to “[r]eceive and examine complaints and charges of delinquent or dependency of a child for the purpose of considering the commencing of proceedings” (42 Pa.C.S.A § 6304(a)(2)). The probation officer must “[m]ake appropriate referrals to other private or public agencies of the communities if they appear to be needed or desirable” (42 Pa.C.S.A. § 6304(a)(4)). An informal adjustment occurs before filing a Delinquent Petition, and the probation officer “refers” the young person and parent(s), guardian or custodian, with their “consent,” “to any public or private social services agency available for assisting in the matter” (42 Pa.C.S.A § 6323(a)(1)). In the case of a dependent child under paragraphs (1)-(7) (definitions for dependent child, herein enumerated above), the ‘probation officer’ or other court officer can take the same steps to make this type of referral (42 Pa.C.S.A § 6323(a)(1)-(2),(b)(1),(3)). An informal adjustment shall not extend “beyond six months” from the commencement date “unless extended” by court order, in which case, “an additional period shall not exceed three months” (42 Pa. C.S.A § 6323(c)). “Nothing contained in this section shall authorize the detention of the child” (42 Pa.C.S.A § 6323(d)). The “terms and conditions of the informal adjustment may include generally payment of “reasonable amounts of money”—including “restitution” and “supervision fees” (42 Pa.C.S.A § 6323(f)).

There will be an informal (detention) hearing before the court or master “not later than 72 hours” after the young person “is placed in detention” to “determine whether his detention” is “required under section 6325 (relating to detention of child)” (42 Pa.S.C.A § 6332(a)). The detention hearing shall further determine “if the child is alleged to be delinquent,” whether “probable cause exists that the child has committed a delinquent act” (Ibid.). “Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the hearing shall be given to the child

and if they can be found, to his parents, guardian, or other custodian” (Ibid.). The probation officers can also “take into custody and detain a child who is under their supervision or care as a dependent or delinquent child” if there is “reasonable cause to believe” that: (1) the “health or safety of the child is in imminent danger,” (2) he or she may “abscond or be removed from the jurisdiction of the court,” (3) by court order or (4) he or she has “violated the conditions of probation” (42 Pa.C.S.A § 6304(a)(5)).

3.2.5 Adjudication

The focus of the delinquent proceeding is whether the child committed the alleged delinquent act as previously set forth. Prior to an adjudication for delinquency (as it is not an adult criminal court proceeding), however, “any time after the filing of a delinquent petition and before the entry of an adjudication order, the court may at its discretion, on motion of the district attorney or counsel for the child, suspend the proceedings,” and order that the child “continue under supervision” in his or her own “home,” “under terms and conditions negotiated with the probation services and agreed to by all parties affected” (42 Pa.C.S.A § 6340(a)). “The order of the court continuing the child under supervision shall be known as a consent decree” (42 Pa.C.S.A § 6340(a)).

“Where the child or the district attorney objects to a consent decree, the court shall proceed to findings, adjudication and disposition” (42 Pa.C.S.A § 6340(b)). “A consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court” (42 Pa.C.S.A § 6340(c)). “Upon application of the probation services or other agency supervising the child,” “made before expiration of the six-month period,” “a consent decree may be extended by the court for an additional six months” (42 Pa.C.S.A § 6340(c)). “Consistent with the protection of the public interest, the terms and conditions of a consent decree may include payment by the child of reasonable amounts of money” given “balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community” (42 Pa.C.S.A § 6340(c.1)).

If the Adjudicatory Petition “alleges that the child is delinquent, within seven days of hearing the evidence on the petition, the court shall make and file its findings whether the acts ascribed to the child were committed by him” (or her) (42 Pa. C.S.A. § 6341(a)). “This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth” (Ibid.). If the court finds that the “allegations of delinquency have not been established” it “shall dismiss the petition and order the child discharged from any detention or other restriction ordered in the proceeding” (Ibid.). “If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent, it shall enter such finding on the record and shall specify the particular offenses, including the grading and counts thereof which the child is found to have committed” (42 Pa.C.S.A § 6341(b)). “In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation” (Ibid.). “If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the proceeding and discharge the child from any detention or other restriction therefore ordered” (Ibid.).

3.2.6 Disposition

The court, prior to the disposition, “may direct that a social study and report in writing to the court be made by an officer of the court or other person designated by the court, concerning the child, his [or her] family, his [or her] environment, and other matters relevant to disposition of the case” (42 Pa.C.S.A § 6339). The court shall then ‘proceed immediately’ or at a ‘postponed hearing’ per the statute, to hear evidence as to whether the child is in need of “treatment, supervision or rehabilitation” and thus, make findings as to the disposition (described below) (42 Pa.C.S.A §6341). Under the Juvenile Act, the court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing (Pa.R.J.C.P. 512). For purposes of deciding disposition, the ‘court may place the child on probation under the supervision of the probation officer’ as per the court’s conditions and limitations, “commit[ing] the child to an institution, youth development center, camp, or other

facility for delinquent children operated under the direction or supervision of the court or other public or private authority and approved by the Department of Public Welfare,” and “if the child is 12 years of age or older, committing the child to an institution operated by the Department of Public Welfare” (42 Pa.C.S.A § 6352(a)).

It is noteworthy that under Title IV-E of the Social Security Act, the federal statute provides that a juvenile who has been ‘removed from the home’ (whether connected with a dependency or delinquent case) and residing in foster care, is eligible for financial entitlement to assist in covering the expenses for maintaining children in foster care and child welfare institutions (42 Pa.C.S.A § 6351(f)(5.1); 42 U.S.C. § 671; 45 C.F.R. 1356). In this instance, the judge must make a ruling at the first court hearing (usually the detention hearing if the child is detained) that removal from the home is ‘contrary to the welfare’ of the child, that in juvenile delinquent cases, “efforts were made to prevent removal, and efforts were made to finalize the permanency planning for the young person” (Ibid.). The term, ‘contrary to the welfare’ of the child, in delinquent cases pertains to a young child posing a threat to himself or herself, needing out-of-home placement, or otherwise continuing to offend and thereby risk injuries and further penalties (Ibid.).

3.3 Crossover System

3.3.1 Definition of ‘Crossover’ Children and Young People

The definition of ‘crossover’ children and young people refers to how they have contact and interaction with both child welfare and juvenile delinquent systems (if at all) (Herz, Crossover Youth Practice Model, Research Summary, n.d.; no page numbers).¹⁴ The definition can vary in describing young people who have “experienced maltreatment” (child abuse and/or neglect) and “engaged in delinquency”—“regardless of whether they are a part of the formal child welfare and delinquent systems” (Ibid.). At the same time, there is a subgroup of “crossover”

¹⁴ The Crossover Youth Practice Model has been developed by the Center for Juvenile Justice Reform at Georgetown University in Washington, D.C. The County of Philadelphia has committed to working with the university in integrating this model (and/or parts of it) into its crossover system. Currently, this model is set forth by Professor Denise Herz’s Crossover Youth Practice Model, Research Summary, with no date.

youth regarded as “dually-involved youth” who are “simultaneously receiving services, at any level, from both the child welfare and juvenile delinquent systems,” possibly “adjudicated” by one system (Ibid.). There is a further subgroup of “dually-adjudicated” youth which encompasses only those “concurrently adjudicated by both the child welfare and juvenile justice systems” (Ibid.).

The term “simultaneously” for “dually-involved” youth does not require that involvement for the young person “began at the same time,” but rather that involvement in both systems “occur” together (Ibid.). Dually-involved youth receiving “services, at any level” encompasses “a wide array of possible interventions” including “being adjudicated in one system while receiving diversionary services from the other,” or “receiving formal services after adjudication in both systems” (Ibid.). For dually-adjudicated youth, adjudication refers to the “formal court processing that result in the young person being ruled ‘dependent’ and ‘delinquent’” (“[r]eceiving diversionary services, for instance, would not constitute adjudication”) and “‘concurrent’ means the adjudication of the youth in one system prior to coming to the attention of a second system” (Ibid.).

3.3.2 Shared Case Responsibility in Pennsylvania

The Office of Children, Youth and Families, Department of Public Welfare, for Pennsylvania has issued a *Bulletin regarding Shared Case Responsibility Policy and Procedures*, effective 1 October 2010 (Bulletin, 2010). The Bulletin is set forth to provide a framework for the County Children and Youth Agencies and the Juvenile Probation Department (Bulletin, 2010; 1). The practice in the Bulletin refers to “sharing of the responsibility for care and services to youth” under the “direct supervision” of either the child welfare agency or probation department, or both “concurrently” (Ibid.). Whilst the Office of Children, Youth and Families does not have regulatory authority for the Juvenile Probation Department, the Juvenile Court Judge’s Commission ‘encourages’ this department to support and implement the policies and procedures (Ibid.). The Bulletin states that youth adjudicated delinquents and their families may have “similar needs and issues to youth and families involved in the child welfare system” and thus “entitled to the rights and protections of that system” (Ibid.; 4). At the same time, the Bulletin states that

“many young people with dependency issues also engage in ‘pre-delinquent’ behavior and may benefit from ‘some interface’ with the juvenile justice system” (Ibid.).

Further, the Bulletin sets forth that “[s]hared *legal* responsibility’ may be “Court-ordered via a dual adjudication order (court determination that a youth is both dependent and delinquent, with care and responsibility assigned to CCYA” (the County Children and Youth Agency), or by a judicial “order that incorporates language creating Shared Case Responsibility” between CCYA [child welfare agency] and JPO [the probation department] for the “youth’s care, possible placement, case management and services to the family” (Bulletin, 2010; 4). The Bulletin outlines less “formalized scenarios” in which both the child welfare agency and the probation department wishes “to consider services” from one another,” including for “cross jurisdictional” or “crossover” cases where “shared case responsibility” is “established as a practice” (Ibid.).

The Bulletin states that the child welfare agency and probation departments have “limited similarities in their service missions,” but do have “overlapping activities” that can “complement and reinforce” one another’s efforts (for example, “competency development” to “develop and increase the skills and capabilities” of youth) (Ibid.). The Bulletin encourages coordination where the agency and probation department should develop an “intake protocol” including “an effort” to “ascertain if the corresponding” agency and probation department is or “has been involved with the youth” and whether “there appears to be any need for crossover services” (Ibid; 5). The Bulletin sets forth the importance of “checking” available “shared databases” whilst remaining “consistent with all statutory and regulatory requirements” (such as confidentiality) (Ibid.).

The Bulletin states that child welfare agencies “should coordinate the filing of their separate petitions to the court,” consistent with the state rules for juvenile court procedure with each the agency and probation department requesting “dual adjudication” or shared case responsibility as a judicial order in the case (Ibid.; 6). It also indicates that if the probation department “suspects possible dependency issues,” then it “should choose” to “make a formal referral” for services to the child

welfare agency or “request an informal consultation with the agency” (including that documentation which must be in the agency case files)(Ibid.). In practice, the Bulletin states that the probation department should be active in acknowledging the child welfare agency requirements under the Adoption and Safety Families Act of 1997 and the Family Service Plan requirements for children and youth, particularly given government funding and reporting requirements.

3.4 Analysis

This analysis is based upon the aforementioned sections setting forth the applicable domestic law pertaining to the young African American women and their involvement in the child welfare and juvenile delinquent systems in Philadelphia. It is thus designed to explore the interface between the child welfare, juvenile delinquent and crossover systems as the young women can enter, move between and within and exit them during childhood and adolescence.

3.4.1 Aims and Objectives

The juvenile dependency system focuses on the parent(s), legal guardian or custodian who have not provided “proper parental care and control” for the child (abuse and/or neglect) (42 Pa.C.S.A § 6302). The focus of this system is ultimately to return the child to the family or to find another alternative permanent home if the basis for the child abuse and/or neglect cannot be remedied (42 Pa.C.S.A § 6301(b)(1)). The juvenile delinquent system addresses the child who is alleged to have, or is proven to have committed offense(s) generally considered crimes in an adult criminal court and who is within the juvenile court jurisdiction. Thus, there are *competing tensions* when a child involved with the juvenile dependency system can be regarded as “troubled” and needing child welfare interventions and services, whilst the *same child* involved in the juvenile delinquent system may be considered a “threat” requiring “control and correction” (such as transfer to the adult criminal justice system) (Goldson, 2002).

The child welfare system focuses on the child as “victim,” the product of the family and its “dysfunction,” rather than as a “threat” and “offender” (which can result in

formal judicial consequences such as a juvenile delinquent record, sentencing and secure detention) (Ibid.). At the same time, it is possible that the county child welfare agency and the juvenile dependency court protect the child from the parent(s), guardian or custodian (who are considered a ‘perpetrator’), whilst the juvenile probation department and the juvenile delinquent court intervene to address alleged delinquent acts committed by the child (including cases where inadequate parental supervision has been the basis for the behaviour leading to the alleged and/or committed offenses) (Goldson, 2002). It is also possible in the child welfare system that the dependent child may receive the same interventions and services as the delinquent child, but the focus is family reunification or finding alternative family home or independent supervised living rather than sentencing as a legal consequence of delinquent adjudication.

Cases may be further complicated by the nature of youth offending and the role of the parent(s), the family and the home environment. The young person may not be able to reside in the family home because the parent(s) is unable to adequately provide for him or her (the ‘dependent’ child), whilst the underlying conduct linked to the offenses and involvement in the juvenile delinquent system is associated with unmet basic needs (such as housing, food, clothing) and safety issues in the home. Likewise, the young person may be attached to his or her parent(s) in the family home, not fully understanding the allegations contained in the Dependent Petition (particularly when underlying averments of neglect pertain to poverty and living in deprived areas) and/or the basis as to why he or she may be accountable for offenses designed to provide for the family (particularly if child welfare did not follow through with designated interventions and services).

In addition, the child or young person who suffers child abuse and/or neglect by the parent(s), guardian or custodian and possible additional trauma during removal from the home (based upon a parent’s inability to ‘provide care and control’ of their child or young person) may experience further trauma from residing in out-of-home-placement(s) and experiencing uncertainty and delays whilst the county child welfare agency looks toward family reunification and/or finding an alternative permanent home for the child or young person or independent supervised living (42 Pa.C.S.A § 6302, et seq). Whilst the Adoption and Safe Families Act of 1997 requires the filing

of a 'Termination of Parental Rights Petition' for a child who has been in an out-of-home placement for "between 15 and 22 months," if there is a "compelling reason" not to file, then the child may continue to reside in the placement (42 U.S.C. § 671 et seq.). The additional time in placement and the trauma this may cause, potentially opens the door to an increased likelihood of the child entering the juvenile delinquent system. On the other hand, if a youth under 18 years old completes his or her requirements related to the delinquent disposition and is abandoned by the parent(s), legal custodian or guardian or the home is unsafe, the young person may enter the child welfare system in order to transition from the juvenile delinquent system (the definition of child includes young people up to the age of 21 who are adjudicated dependent by 18 years old) (42 Pa.C.S.A § 6302; Herz, Ryan and Bilchik, 2010; 319).

At the same time, there is a 'crossover' court system that is a hybrid of the juvenile dependency and juvenile delinquent systems. This system provides for children and young people who crossover by entering, moving within and exiting these two systems, but it can pose problems in attempting to serve both the 'troubled child' and the 'child in trouble.' The main principles of this system are to serve each child individually and have them grow up in his or her own family that provides a safe, nurturing and permanent environment, but also to address the entire context of the young person and his or her 'dysfunctional family,' including youth offending. In this way, the aims and objectives become 'messy' even when there are the best intentions for service planning and delivery with an integrated approach between child welfare, juvenile delinquent, the courts, education and mental and behavioral health. This is particularly the case when problems associated with poverty, living in deprived neighbourhoods and attending poorly funded schools cannot be remedied with interventions and services (Herz, Crossover Youth Practice Model, Research Summary; n.d.).

3.4.2 Converging and Diverging Definitions of ‘Child’

Initially, the same child or young person can fall under the definitions of child in both the ‘dependent’ and ‘delinquent’ systems. That being said, the same child can have differing levels of involvement until final discharge, in which cases ‘messy boundaries’ can arise between the child welfare and juvenile delinquent systems. Furthermore, there are contradictory tensions about the age and maturity of the child when the jurisdiction of the juvenile dependent court extends to an “ungovernable” dependent child who may not be able to distinguish between right and wrong when engaging in “habitual disobedience,” but who simultaneously, can be regarded under the Juvenile Act as having the capacity to form criminal intent due to alleged offenses, not within juvenile court jurisdiction (42 Pa.S.C.A § 6302(6)). There may be no connection made within the child welfare and juvenile delinquent systems when a dependent child has court involvement in the child welfare system as a “troubled” child in need of child welfare interventions and services to address abuse and/or neglect, and when the same child “in trouble” moves directly or is transferred into the adult criminal justice system and possibly, its corrections system. Whereas there are systemic responses then, the reality is that child protective services are “largely reserved” for the “‘deserving’” young person whilst “quite different (and usually less favourable)” ones are “targeted at their ‘undeserving’ counterparts” (Goldson, 2002; 12).

Whereas legal definitions are intended to benefit children and young people, serving their needs and safety in the child dependency system and addressing their young offending in juvenile delinquent systems, the scope and nature of legal authority and the discretion and decision making afforded to law enforcement, probation officers, social workers and judges under applicable domestic law, can allow for interpretations that have substantial impacts on how children and young people are treated within and outside of such systems (regardless of their ‘crossover’ or related status). Furthermore, the definitions do not cover young people whose hearings are transferred, either automatically or by a juvenile delinquent court, to an adult criminal court.

In addition, the Bulletin issued by the Office of Children, Families and Youth regarding Shared Case Responsibilities Policy and Procedures is at times unclear as to the scope and nature of shared responsibility for care and services by the county child welfare agency, probation department, or both concurrently, when supervising a young person. Neither does it define supervision, including whether the court is involved. Due to the lack of clarity, there is ample room for ‘messy boundaries’ and ‘lottery systems of intervention’ arising in these types of cases. However, the Bulletin does set forth that “shared *legal* responsibility” may be court-ordered via a “dual adjudication” order (“court determination that a youth is both dependent and delinquent, with care and responsibility assigned to the County Children and Youth Agency), or by a judicial order that incorporates language creating ‘shared case responsibility’ between the agency and the probation department for the youth’s care, possible placement, case management and services to the family”)(Bulletin, 2010). In this instance, it is useful that the term “dual adjudication” is defined in relation to specific areas where a judge may issue a court order deciding the language for “shared case responsibility.”

3.4.3 The Complexities and Tensions of Legal Representation

The nature of appointing counsel differs between the delinquent and dependent systems, and it can demonstrate discrepancies between them. A young person with involvement in both systems is subject to the different aims and goals of the guardian ad litem in a juvenile dependent court proceeding and the prosecutor and counsel for the young person in the juvenile delinquent court. Whilst under the Juvenile Act, the guardian ad litem appointed to represent a child or young person in the juvenile dependency court is obliged to represent the ‘best interests’ of the child and the child’s wishes before the court, the constitutional right to counsel for a young person alleged to have committed a delinquent act(s) is ultimately focused on his or her attorney demonstrating the failure of the prosecution to prove beyond reasonable doubt the charges against his or her client. The burden of proof needed to show a child as dependent (perhaps ‘ungovernable’ and referred to the juvenile dependency system by a probation officer) is different from the burden of proof required to demonstrate beyond reasonable doubt that the child committed a delinquent act(s). It is a ‘lottery’ since the same types of behaviour can pave a path

into one or other system depending on the decision making and discretion of the court, probation department, county child welfare agency and/or other participants.

Another critical issue concerns whether the young person understands not only the meaning of waiving counsel in a juvenile delinquent proceeding but the allegations, the judicial proceedings (particularly the adjudicatory and disposition hearings) and the state and federal constitutional rights and safeguards. When the guardian ad litem is considering the basis for adjudicating a child as dependent and family reunification and/or identifying an alternative permanent placement or supervised independent living, there is no guarantee that the child will understand or have a participatory role before the court (particularly given that the child advocate can assert what he or she considers the 'best interests' of the child). It is further possible that there are conflicting interests among family members regarding allegations contained in the Dependent and Delinquent Petitions, wherein a parent(s)' interests may not be the same as those of the child or young person.

3.4.4 Case Processing and the Punishment of Dependency

The probation officer has the discretion and decision making authority to make a referral which can result in the child receiving child welfare interventions and services to address allegedly delinquent act(s), or perhaps a decision to process the case in the juvenile delinquent system. It is notable that the focus on the "timing of juvenile justice involvement for child welfare cases, and the likelihood of subsequent reports of maltreatment and the risk of re-offending" is generally higher for a proportion of dually involved young people, given their increased contact with 'mandatory reporters' (such as 'probation officers') and interactions with these systems" (Huang, Ryan, Herz, 2012; 259).

As part of the intake process, the juvenile probation department can also identify whether the young person is a 'crossover' youth involved in both the child welfare and juvenile delinquent systems (for instance, the definition of 'crossover' may be used inconsistently within the same department or among departments and systems) (as statutorily explained herein; Bulletin, 2010; 5-6). Where the probation department identifies a 'crossover' young person at intake or a later time, the officer

can review the case, contact the child welfare agency and decide the next steps in working within the two systems (Ibid.). As a result of this type of discretion and decision making capacity, the young person may be diverted with increased focus and attention to the child welfare system, not diverted at all and rather processed in the juvenile delinquent system, or receive interventions and services from both systems (Ibid.).

Furthermore, research has shown that young people in foster care “continue to enter detention at disproportionate rates, and court officials still detain many foster youth at higher rates than their non-foster peers arrested on similar (more serious) charges” (Conger and Ross, 2006; 112). The basis for detaining a youth in foster care may be related to the lack of an available parent(s), legal custodian or guardian into whose care the child can be released. It could also be due to a prosecutors’ determination regarding managing the risk of further offending or concern about the likelihood of the young person failing to appear before the court (Ibid.; 101, 110).

Thus, the research indicates that young people who are placed in foster care and detained, generally receive harsher treatment than their ‘non-foster peers’ (Ibid.). This is because of their juvenile dependency (child welfare) status and need for a level of social services support which is responsive to their needs and safety in out-of-home placements. The use of detention for foster care youth can have a tremendous impact on a child (and the involved agencies, interventions and services provided). The imminent consequences can disrupt their out-of-home placement stability and relationships and even result in the entire loss of the foster care placement (Ibid.; 101). Consequently, the ‘deserving’ child who needs protection and care is now ‘undeserving’ and despite needing child welfare interventions and services, may now enter the juvenile delinquent system (or even the adult criminal court system) where they are jettisoned (Goldson, 2002).

In juvenile dependency and juvenile delinquent courts, for example, the mental and physical health report can show that children and young persons as ‘acting out’ but the county child welfare agency and the probation department may make recommendations to the court which differ depending on whether the child is considered dependent and needing ‘proper parental care and control’ or as a

delinquent needing ‘treatment, supervision and rehabilitation’ (42 Pa.C.S.A §§ 6302, 6339). There may also be inherent contradictions in legal authority where eligibility for an out-of-home placement, and the type of placement deemed ‘suitable’ to address the needs and safety, or offending of a young person who is adjudicated dependent or delinquent, are based on the characterization of his or her mental health.

In this way, both juvenile dependency and delinquent adjudicatory hearings, considerable discretion are afforded to the district attorney, probation officer and county child welfare agency when it comes to setting forth the allegations contained in the Dependent and Delinquent Petitions filed with the court. Potentially, the allegations set forth in these Petitions can create ‘messy boundaries’ when a similar allegations is the basis for either adjudicating a child as dependent or as delinquent (the ‘ungovernable’ child versus the child who allegedly or has committed delinquent act(s)).

Significantly, there is research finding that the relationship between the child welfare status and the disposition outcome has a significant impact on how a young person is treated in the systems. The evidence shows a real discrepancy between ‘dually involved youth’ and young people who are not involved with more than one system, particularly when it comes to probation, there is ‘bias’ against young people who are in foster care (Ryan, et al., 2007; 1046; Conger and Ross, 2006; Conger and Ross, 2001). This research also indicates that first time offenders who enter the juvenile delinquent system from the child welfare system are less likely to receive a disposition of ‘probation’ and more likely to receive a ‘suitable (dependent) or correctional (delinquent) placement than youth who do not have a child welfare history’ (Ibid.). ‘Crossover’ youth tend to receive ‘harsher’ dispositions, ‘stay longer’ and ‘penetrate deeper’ into the juvenile delinquent system; they also have higher recidivism rates than their ‘non-maltreated’ peers (Herz, Ryan and Bilchik, 2010; 310; Halembe, Seigel and Lord, Arizona Dual Jurisdiction Study Final Report, 2004).

There may further be ‘messy boundaries’ and ‘lotteries’ as to systems involvement given researchers noted in one study that courts must “cobble together policies and

programs based almost exclusively on professional judgment, anecdotal evidence and findings from juvenile delinquent literature” (Ryan, Herz, Hernandez, Marshall, 2007; 1037). There were further questions raised about whether case consolidation is appropriate in ‘dual jurisdiction’ cases in order to address difficult challenges about the degree of coordination between probation and parole, child welfare, behaviour health and how to best access and fund the ‘myriad’ of ‘expensive services’ to encourage youth to become law abiding citizens (Arizona Dual Jurisdiction Final Report, 2004; ii).

3.5 Conclusion

As this chapter has demonstrated, the interpretation of applicable state and related child welfare and juvenile delinquent law provides leeway for discretionary decision making which can be exercised by the court, probation department and county child welfare agency about what may be ‘best’ for children and young people. Specifically, there can be discretion about the nature of their legal representation, case processing, adjudication and disposition. The results of these decisions can have a significant impact on a child’s life and can range from reuniting children and young people who are deemed to be ‘dependent’ with their families (or providing another alternative option), to a whole range of sentencing choices for those who are adjudicated ‘delinquent.’

Ultimately, despite the fact that the courts, the probation department and the county child welfare agency all have the best intentions for serving the safety and needs of children and young people and addressing their instances of youth offending, ‘messy boundaries’ and ‘lottery systems of intervention’ do manifest themselves. The interplay between these systems, where they overlap, intermesh and/or leave cracks and gaps, can result in a lack of consistency and coherency. Whilst attempts continue to be made to categorise young people within particular definitions of their relationship to juvenile dependency and delinquent systems, what has been clearly shown is the systematic discretionary bias against young people who need comprehensive interventions and services to serve their needs, safety and rehabilitation.

This being the case, there is a need to identify and support ‘crossover’ young people involved in the child welfare and juvenile dependency systems and to build a “comprehensive system of care across probation, child welfare, mental health, education” (Herz, Harada, Lecklitner, Ryan, 2009; 495, 522-523). There is also a need for a screening process that collates information related to mental health, substance abuse, gangs, education and other issues (in addition to review of existing assessment information), in order to engage the young person and family “as much as possible” before a court appearance (Herz, Crossover Youth Practice Model, Research Summary, n.d.). At the time of case assignment, the child welfare social worker and the juvenile justice case worker need to review all available material in a shared information system (Ibid.; n.d.). For a coordinated system such as this to be developed, specific information about how to manage data collection and establish and share databases in compliance with local, state and federal requirements (such as confidentiality) would be needed.

Whilst the Bulletin issued by the Office of Children, Families and Youth for Pennsylvania does not provide specific applicable domestic law or sufficient information about the policy and procedures specific to the ‘crossover’ system in Philadelphia, it does to some extent describe shared case responsibility and how it applies to the county child welfare agency, the probation department and the court system. The opportunity is there to develop a more comprehensive approach and framework for the child welfare and juvenile delinquent systems, addressing the needs, safety and rehabilitation of young people involved in both systems.

This chapter has helped to explain the legal foundations of the child dependency and delinquent systems whilst also exposing the practical complexities both within and between them. What is missing from such discussions, however, is the question of the participation of the child in such proceedings. Indeed, the legal authority is also limited to the extent in which it requires child participation when involved in the systems under applicable domestic law. Further, the research and the Crossover Youth Practice Model, Research Summary do not take the perceptions and opinions of children and young people into account particularly in terms of meeting their needs and safety and addressing rehabilitation. Given how the researchers virtually dismiss consultations with young people and the limitations of applicable domestic

law, it is important to consider an interpretive guide for the role of the child and child participation under the international children's rights treaty, the United Nations Convention on the Rights of the Child.

CHAPTER 4:

Stop the Whining - This Is For Real Realising the Rights of the Child to Participate in the Child Welfare and Juvenile Delinquent Systems in the USA:

Article 12 of the United Nations Convention on the Rights of the Child
as a Comprehensive, Undeniable Frame of Reference

4.1 Introduction

Child participation is essential for informing and contributing to decision making in the child welfare and juvenile delinquent systems in America. Initially, this chapter generally discusses why ‘participation’ in decision making is beneficial for children and young people involved in these systems, particularly for those who are marginalised or excluded. The chapter then focuses on the international children’s rights treaty, the United Nations Convention on the Rights of the Child (CRC) and how it is “universally recognized as the framework for analysing laws that affect children” (Bennett Woodhouse, 2008; 10). Whilst the United States has not ratified the CRC, and many nations have not fully implemented it and/or have violated it, the chapter focuses on how this treaty can serve as a comprehensive, undeniable frame of reference for analysing the United States’ treatment of children and young people in the child welfare and juvenile delinquent systems in Philadelphia.¹⁵

Thereafter the chapter focuses on the child rights-based approach underpinning the international children’s rights treaty (as opposed to a parents rights-based approach relied upon in the United States) and specifically, the nature of child participation in light of Article 12 of the CRC and its interpretative guidance set forth by the Committee on the Rights of the Child and referred to as General Comment 12. This article provides for the children’s right to ‘freely express’ their views and have them given ‘due weight’ in decision making, in addition to providing for an ‘opportunity to be heard’ in ‘judicial and administrative’ hearings (if choosing to do so)(Article 12). In consideration of Article 12 and General Comment 12, the chapter then

¹⁵ Whereas Article 12 does not contain the term, ‘participation,’ the concept of participation is initially explored in this chapter and then addressed in the later section directly focused on its treaty language.

explores models of participation that inform the nature of child participation. These models can magnify whether adults are listening to them, taking them seriously, respecting their views and overall, heeding their views in decision making. Specifically, this chapter discusses the child participation model developed by Professor Laura Lundy that focuses on a model of child participation that considerably aligns with the intent and language contained in Article 12 and its interpretation according to General Comment 12 (Lundy, 2007).

Nevertheless, whilst the United States has remained obstinate in adopting CRC, this chapter acknowledges where the USA has relied on the CRC as a frame of reference. This chapter also recognises the ratification arguments surrounding the CRC, particularly when considering the parent rights-based approach to decision making in the USA. In this light, the chapter contemplates the nature of child participation and if state law provides a role for child participation in decision making, particularly regarding in the child welfare and juvenile delinquent systems. Despite the USA as a globally developed country, the empirical research showed that there were young women living in poverty and struggling with intensely difficult situations and were thus, also limited in contributing to decision making about their lives and destinies (Ray, 2010; 65). Consequently, the empirical research showed barriers to participation which can impact how lack of child participation contributes to overrepresentation of girls and young women in the systems and their routes through them.

4.2 Benefits of 'Participation' for Children and Youth

Overall, it is important to recognise the benefits of child participation as providing information and influencing decisions about a range of circumstances in children's lives, particularly given how involvement in child welfare and juvenile delinquent systems typically involve many adults who may not have a full understanding about their lived experiences and their views for building a future as expressed by them. Further, the opportunity for children to appear before the judge in judicial or administrative proceedings can serve as a means for taking into account their views and ensuring that they are not bypassed in setting forth decisions about their lives and futures. In the child welfare system, "facilitating participation in decisions can

help children and young people to feel connected and committed to the decisions that are taken, especially with regards to in-home social work visits, out-of-home placements and permanency options (van Bijleveld, et al. 2015; 129; Woolfsen et al., 2010). Studies have further shown how participation is associated with an increased feeling of mastery and control (van Bijleveld, et al., 2015; Leeson, 2007; McLeod, 2007; Bell, 2002; Munro, 2001) and thus, may result in children responding better to the interventions of social services (van Bijleveld, et al., 2015; Barnes, 2012; McLeod, 2007)” (Van Bigleveld, et al., 2015).

In the juvenile delinquent system, children’s participation is equally important to help them understand their due process rights and therefore, to contribute effectively to decision making and to their defence. Their participation can also potentially increase the likelihood of their responding well to services, ‘treatment and rehabilitation’ (42 Pa.S.C.A § 6302). Listening to clients, moreover, such as the young African American women who participated in this study, can “increase accountability and legitimacy of governments and institutions,” particularly as many of the young women in the study (as shall be shown in the data analysis chapter) are socially marginalised and excluded from the decision making processes (Teamey and Hinton, 2014; 27). Thus, it is important to understanding how the young African American women who participated in the empirical research described their levels of participation; they are also useful in understanding whether their participation made a difference in reducing their presence in the child welfare and juvenile delinquent systems and/or the length and nature of their routes through the systems.

4.3 The Child Rights Based-Principle

Under the United Nations Convention on the Rights of the Child, there is a child rights-based approach whereby children have their own set of individual human rights (as opposed to parents rights-based approach whereby they generally have authority over their children’s autonomy until reaching the age of majority in the United States—and discussed later in the chapter). The CRC’s approach represents a paradigmatic shift from the USA’s approach and a fundamental reason why the United States has not embraced the CRC nor ratified it. According to Professor Michael Freeman, a child rights-based approach recognises children and young

people as deserving “treatment as persons as equals” and having a “normative attitude of respect for [their] individual autonomy”—thus, they are regarded as bearers of human rights (Freeman, 1983; 54). In this respect, the CRC adopts a child rights-based approach whereby the treaty is “not dependent on actual autonomy,” but on the child having “the capacity for it” (therefore increasingly positioned to exercise their autonomy as they develop capabilities) (Ibid., 1983; 54). Moreover, there is both the right to equal ‘opportunity’ and the right to ‘liberal paternalism’ whereby parental intervention is justified (Ibid.; 57-58). For instance, liberal paternalism means parents can be “readily justified” intervening in their child’s life in order to protect them “...against actions which may lead to his death or serious physical injury or mental disability,” and to insist “on a system of compulsory education” (Ibid.; 54-62). The fact that it does require justification, nevertheless, means that it is restricted (Ibid.). It is critical to recognise this approach as fundamentally underpinning models of participation, as in order to provide children with genuine and meaningful engagement and participation, they must have a right to so do and a recognition that their capacity increases as they mature.

In addition, according to Tobin, there is consensus “facilitated by a conception of dignity in which all human beings, including children have a unique value and a conception of children as being vulnerable relative to adults yet possessing an evolving capacity for agency and autonomy” (Tobin, 2013; 396).¹⁶ Tobin sets forth the “idea of a social interests theory of rights to capture the social and deliberative process by which rights are created and recognised;” this idea is crucial in heeding the three considerations when contemplating the relationship between children as rights-bearers and adults: (1) the “obligations of the duty bearers,” (2) an “explicit recognition of the struggle to regulate power in the production of rights” and (3) an “awareness of the need for reflective practice” (Ibid.; 409). These considerations are particularly noteworthy for children’s rights as a “tool to regulate the relationship between the powerful and the powerless,” particularly in terms of relying on a ‘best interests’ principle (albeit its historical importance in protecting children as stated by

¹⁶ It must be noted that Tobin argues that “there is overlapping consensus as to the conceptual foundations of children’s rights under the CRC” and also sets forth as stated above regarding how it is facilitated (Tobin, 2013; 396).

Eekelaar in protecting children's interests)(citing Eekelaar, Tobin, 2013; 410).¹⁷ It should also be noted the parent rights-based approach in the United States, as shall be discussed below, for determining 'best interests' can be heavily weighted in favouring the adult's authority at potentially the expense of the child under state law regarding the guardian ad litem appointed to represent the child in child welfare proceedings conducted in Pennsylvania.

Thus, it can be deduced from a child rights-based approach that it provides for a 'deliberative process' involving all interested 'parties, beneficiaries and duty-bearers' in order to 'realise the collaborative nature for exercising children's rights' (and to understand children from their lived experiences and interests as in empirical 'research')(Tobin, 2013; 415-416). Consequently, as discussed through the original work in this thesis, the same type of relationship as to this type of rights-based approach is critical so that many adults involved with the African American girls and young women are part of a 'deliberative process' which recognises how they express their 'lived experiences and interests' as opposed to adults imposing their views on them—particularly when there is a low level of trust (Ibid., 2013; 415-416). At the same time when considering this process, Lansdown (in referring to children's participation under Article 12) states that "it embodies the presumption that adults retain responsibility for the actual decision, whilst being informed and influenced by the views of the child" (Lansdown, 2010; 13).

4.4 The CRC, Article 12 and General Comment 12 on 'Participation Rights'

Foremost, the CRC is a children's rights treaty that sets forth a full range of 'civil,' 'political,' 'economic, social and cultural rights' in one comprehensive legal instrument (Unicef, (n.d.); website homepage).¹⁸ It provides a common, consistent set of children's rights which are globally recognised and endorsed by the world community of State Parties belonging to the United Nations. The CRC serves as the "basic metric for measuring a nation's progress in meeting its obligation to respect and protect its children" (Bennett Woodhouse, 2008; 10). Through its shared

¹⁷ Tobin's bibliography does not show a 2008 publication for Professor Eekelaar .

¹⁸ This cite is http://www.unicef.org/ceecis/overview_1583.html and also set forth in the bibliography.

language, the treaty also provides transparency and accountability for nations. In short, the CRC is “an aspirational standard, serving as a tool for advocacy and education and a benchmark for progress,” in addition to its legal value (Aber, et al., 2010; 167).

The CRC provides four guiding principles for upholding children’s rights regarding the best interests of children (Article 3); their right to ‘survival and development’ (Article 6); their capability to ‘freely express’ themselves and have an ‘opportunity to be heard’ (Article 12); and non-discrimination against children (Article 2). It further provides for rights in three categories pertaining to ‘provisions,’ ‘participation’ and ‘protection’ of children and young people (Hammarberg, 1990; 100). The provision rights include the rights to adequate food, shelter, education, health care, recreation and play (Articles 6, 24, 27, 28, 31; Ibid.). Participation rights include Articles 12 and 13-17 and the ‘freedom of thought,’ ‘conscience’ and ‘religion’ and the right to ‘information,’ although the term ‘participation’ is not contained in the actual treaty language (Articles 13-17; Hammarberg, 1990; 100).

‘Protection’ rights include protection from all forms of child abuse and neglect (Hammarberg, 1990; 100). These protection rights apply, therefore, not only to the child welfare and juvenile delinquent systems as they intervene to protect children, but in the resulting responsibility they have to ensure that children are protected from abuse and neglect from the systems themselves (Ibid.). Overall, the CRC provides for a child as a “human being who has the right to be respected as a unique individual with [her] own perspective and personal intentions by fellow human beings and also by the state, its institutions and other organisations” (Krappmann, 2010; 507). The child-rights approach sets forth in this treaty differs significantly from the United States’ approach to the treatment of children and young people in state care or custody. Using the CRC as a frame of reference is, therefore, important as it allows for a comparison with the USA’s approach, in turn highlighting areas of serious concern within the systems.

Article 12 of the CRC provides a comprehensive, indisputable expression of children’s participation rights. This article states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (United Nations General Assembly, 1989).

Initially, Article 12 “most clearly express[es] the concept of the child underlying the entire Convention” and is critical for the exercise of all other rights under the CRC (Krappmann, 2010; 501). Further, it is “not only a right in itself, but should also be considered in the interpretation and implementation of all other rights” (General Comment 12, para. 2; Lundy, 2007; 933). Article 12 sets forth “unequivocal language and a strongly inferred equation with the right to participation [which] makes it an effective benchmark against which law, policy and practice can be measured. Moreover, its status as a guiding principle and a provision with which all other provisions must be read, supplements its value in the process meaning that it can usefully be applied in all areas” (Kilkelly, n.d.).¹⁹ Article 12 is also important, as well as being a ‘legal right’ and ‘duty’ for facilitating the participation of children, “for political and social reasons insofar as it improves services, decision-making and broader democratic processes; promotes children’s protection and enhances their skills; and empowers and enhances children’s self-esteem” (Kilkelly and Donnelly, 2006; 9; Sinclair, 2004; Lansdown, 2001).

Thus, it is important to recognise how Article 12 must also be taken into consideration as to other articles contained in the CRC (General Comment 12, Lundy, 2007; 932). Under Article 2 of the CRC, for instance, there shall not be discrimination against groups including those who are socially marginalised and excluded such as the young African American women during their involvement with the child welfare and juvenile delinquent systems (Article 2). These young women were frequently less likely to be given opportunities to have a voice in decisions about their daily lives and futures as shall be discussed about the empirical research in Chapter 8. Specifically, the CRC Committee “recognizes that certain groups of

¹⁹ This document is located on the Internet and no indication of publication elsewhere.

children...belonging to marginalized and disadvantaged groups, face particular barriers in the realization of this right” (General Comment 12, para. 4). In other words, there is a need for the nature of participation to be “decolonized to allow for pluralistic possibilities” including “listening to stories, histories, values, practice and concepts at local levels” (Tisdall, et al., 2015; 16). The life stories of the young African American women who participated in the empirical research, can be considered in terms of these interpretations of participation and whether the systems allowed them to have a meaningful role in contributing to decision making.

There is further a wide-reaching obligation under Article 12 imposed on adults to facilitate children’s ‘right to express their views freely’ in decision making about their own lives and as set forth in the next section regarding models of participation, particularly Lundy’s model. They can ensure that when considering the ‘best interests of the child’ in making decisions that the child’s views inform this guiding principle (Articles 5, 12; General Comment 12, paras. 70-74). In this way, Article 12 means adults do not have ‘leeway’ to opt out of this obligation and children and young people do not have to prove their capacity to have a right to express a view; Article 12 also imposes no age limit on the right of children to *express* their views in decision making nor an age threshold to *determine* their ‘maturity’ in giving ‘due weight’ to them in decision making (General Comment 12, paras. 19, 21, 29; Lundy, 2007). General Comment 12 also interprets the term, ‘maturity,’ as ‘complex’ and means young people who have “reasonable and independent’ capacity to form views on issues, along with an ability to understand and assess the implications of a matter” (General Comment 12, para. 30).

In addition, whilst ‘participation’ can be a ‘buzzword’ with many interpretations and usages and the term is not contained in the text of Article 12, General Comment 12 interprets this term with a short description (Tisdall, 2015; 9). General Comment 12 describes ‘participation’ as an ‘ongoing processes’ including “information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcomes of such processes” (General Comment 12, para. 3; Tisdall, et al., 2015). Specifically, General Comment 12 sets forth that children must be ensured they receive ‘all necessary information and advice’ in order to have ‘sufficient

understanding' to express their views and contribute to decision making (the State is not required to provide 'comprehensive knowledge') (General Comment 12, paras. 16, 21, 25, 81-82). Whereas this General Comment further states that children should be provided with an 'environment' that enables them to exercise their right to freely express their views, the 'environment' shall account for the children's 'individual and social situation[s]' where children feel 'respected and secure when expressing themselves' (General Comment 12, paras. 12, 23). General Comment 12 stipulates, moreover, that 'simply listening' to children is 'insufficient;' adults must seriously consider the views and children must receive feedback about the outcome of decisions (General Comment 12, para. 28, 45).

In terms of children's rights to be heard in court proceedings, the 'environment' shall also not be 'intimidating, hostile, insensitive or inappropriate for her age,' particularly pertaining to accessible, 'child-friendly courtrooms' with 'trained staff' and 'separate waiting rooms;' the child should also have a representative that 'exclusively' represents her views (General Comment 12, paras. 34, 37). General Comment 12 elucidates that the 'decision maker' (such as the judge) shall before the actual hearing 'prepare' the child, providing explanations as to: (1) how, when and where the hearing will take place, (2) who are the 'participants' and (3) how her views are 'take[n] into account' (General Comment 12, para. 41). In addition to preparation, the decision maker shall consider 'the views of the child as a significant factor in the settlement of the issue' (General Comment 12, para. 44). This process is not concluded until the decision maker informs the child of 'the outcome of the process' and explains how her or his 'views were considered,'—which thus can demonstrate accountability and transparency about the role of children's participation in decision making (General Comment 12, para. 45).

Specifically, it is also important to recognise under this General Comment that there must be 'mechanisms' introduced to ensure the views of children in 'alternative care' (placements including institutions and their regulations) are taken into account, especially if they need to report confidentially and/or during an 'emergency' situation (General Comment 12, paras. 97, 120, 125). Given Article 12 and General Comment 12, the treaty language and its interpretation are crucial to consider when discussing the empirical research as to how the voices of the young African

American women are regarded by adults when involved in the child welfare and juvenile delinquent systems. Whenever a decision is made to remove a child from her family because she is a victim of abuse or neglect in the home, the child's view must be taken into account when determining the 'best interests of the child' (General Comment 12, para. 53). The child's views shall also be considered regarding "placement in foster care, development of care plans and their review and visits with parents and family" (General Comment 12, paras. 53-54). In the juvenile delinquent system, this General Comment sets forth that the child must be 'informed promptly and directly about the charges,' the 'juvenile justice process' and 'possible measures taken by the court' so they can understand and be 'informed about their case' (General Comment 12, paras. 58-61). It is especially so, when one considers how, from a young age, their input could help inform decisions about their routes through the systems, increasing the likelihood they are listened to, take seriously and respected by adults involved in the processes.

4.5 Conceptualising 'Participation' and Models of Participation

There are a number of important models focusing on child participation that assist in conceptualising it, particularly regarding the treaty language under Article 12 of the CRC and its interpretation pursuant to General Comment 12. Initially, Sherry Arenstein's model of citizen participation provides for a model regarded as the 'ladder metaphor' (citing Arenstein, Parkes, 2013; 18). This has eight rungs representing "various degrees of involvement of 'have-nots' in decision-making, with each rung of the ladder corresponding to the level of citizen participation" (Ibid.). This model, adopted by Hart, further develops a "ladder of child participation" albeit it does not incorporate Article 12 as part of it (citing Hart, Ibid.). The lowest three rungs pertain to lack of participation and the empirical research shall show, they are useful to some extent in assessing whether children and young people were able to participate when involved with the systems. At its lowest rung is 'manipulation,' whereby "children do not have understanding about the issues and do not understand their actions" (citing Hart, Ibid.). Manipulation can also be applied to circumstances where the children do not receive feedback (citing Hart, Ibid.).

Hart's second rung pertains to 'decoration' which means adults use children in "bolstering their cause but children have little or no idea" about it (Ibid.). The third rung concerns 'tokenism' whereby children are "given very little or no input into what the subject should be about or in which it is communicated" (citing Hart, Ibid.). Further, Hart's next five rungs focus on exploring whether the young women had an opportunity to participate (Ibid.). These rungs are "designed to the extent that they maximise the opportunities for children to participate at their highest level if they so wish" (Ibid.). The five rungs include: "assigned but informed; consulted and informed; adult-initiated shared decisions with children; child-initiated and directed; and child-initiated, shared decisions with adults" (Ibid.; 18). As we will see in this thesis, the American tradition largely focuses on adult authority and thus, potentially diminishes a meaningful role for the girls and young women in decision making when involved in these systems.

Whilst Treseder, like Hart, does not relate levels of participation to Article 12 under the CRC, he does note that "it is possible to involve children in any decision affecting them as long as the process is clearly set out from beginning to end" (citing Treseder, Parkes, 2013; 18). He focuses on "informing organisations who wish to include child participation as part of their policy" (citing Treseder, Ibid.). As this thesis focuses on the past involvement of young African American women in the child welfare and juvenile delinquent systems, it is essential to examine child participation as they are at the centre of these systems which address their lives and destinies. In addition, Shier sets forth a model for child participation, concluding that in situations where children make a decision to participate, there should be a focus on listening to them, 'supporting' them in expressing their views, 'taking' their views into account, 'involving' them in the decision making process and having children "share power and responsibility for decision making" (citing Shier, Ibid.; 20). These very clear statements set forth an entire process and how each step can be designed to help the girl or young African American woman to participate.

Moreover, Lundy's conceptualisation of 'participation' considers the ongoing processes, 'information-sharing, dialogue and feedback between children and adults' in her model of participation, which contemplates their participation by relating it 'directly' to the treaty language contained in Article 12 of the CRC (General

Comment 12, para. 3; Lundy, 2007; 932). Consistent with General Comment 12, Lundy indicates that children must be actively involved in decision making and that it is not an 'option,' especially since "adults can find compelling reasons for not giving children's views 'due weight' in decision making processes" (Lundy, 2007; 931-932). Likewise, she further indicates that Article 12 must be read in 'conjunction' with other articles under the CRC (Ibid.). Specifically, her model considers the key text of Article 12 and its interpretation ensuring children's right to express a view and giving that view 'due weight,' as well as when applying the other phrases contained in the language of this article (Lundy, 2007; 931).

Lundy, thus, provides a model to conceptualise Article 12 which focuses decision makers on four key elements: space, voice, audience and influence whereby this article has an 'explicit chronology' (Lundy, 2007, 933). The element, 'space,' means children are 'given the opportunity to express a view' (Ibid.). When initiating this process, 'space' further refers to "the creation of an opportunity for involvement—a space in which children are encouraged to express their views" in order to 'meaningful[ly] engage' in decision making' (Lundy, 2007; 933). This element means taking 'proactive steps' such as 'invite[ing]' and encourage[ing] input,' 'ask[ing]' what issues matter to them and how they 'would like to be involved,' as well as whether they 'wish' to participate in decision making (Lundy, 2007; 934). Like General Comment 12 and providing a safe environment, this space must also be 'safe' where children do not feel at 'risk' for 'harm' in expressing their views (including that they can express them anonymously and/or without discrimination of any kind) (General Comment 12, para. 132; Ibid.).

When considering ensuring children have a right to express a view, the element, 'voice,' means adults facilitate children to express a view; it is also not dependent on children's 'capacity' but rather on their "ability to form a view, whether mature or not" (Lundy, 2007; 933, 935). Lundy considers that ensuring children's right to express their views is done 'freely' as stated under Article 12 and with the 'help of others' or guidance as provided under Article 5 (Ibid.). For instance, during the 'UN Special Summit on Children's Rights in 2002,' children and young people identified "a range of prerequisites" such as "sufficient time to understand the issues; access to child-friendly documentation and information;" and "training for adults to overcome

resistance to children's involvement" in order to guide them in meaningfully engaging in the decision making processes (Ibid.). General Comment 12 also explicitly emphasises how at the 'youngest age,' children can contribute their views including with 'non-verbal' movement; children also do not have to prove their 'capacity' (General Comment 12, para. 21).

Further, the element, 'audience,' refers giving 'due weight' to the views of the child based on age and maturity; thus, this 'audience' must ensure that "their views are *listened to* (not just heard)" and do in reality have 'influence' on those involved in the decision making processes" (Lundy, 2007; 936-937). According to Lundy's model, 'audience' means "a guaranteed opportunity to communicate views to an identifiable individual or body with the responsibility to listen" (Ibid.; 936-937). General Comment 12 further states that whilst 'maturity' is a complex, children and young people are considered 'mature' when they have a 'reasonable and independent' capacity to form views and understand and assess their implications in a matter (General Comment 12, para. 30). Whereas 'audience' requires that adults take children seriously in evaluating 'due weight' as to maturity and age under Article 12(1), General Comment 12 also offers a definition to consider in determining the 'maturity' of the child or young person by focusing on her "ability to understand and assess the implications of a particular matter" and express views in "a reasonable and independent manner" (General Comment 12, para. 30).

Last, the element, 'influence,' concerns what constitutes 'due' regarding the words, 'due weight,' contained in Article 12 (Lundy, 2007). Article 12 is designed to ensure children's right to freely express a view and therefore, 'influence' means adults must take children's views seriously; children must be "told how their views were taken into account" and how they were "acted upon" as appropriate (Lundy, 2007; 933, 938). In this regard, Lundy states, "[C]hildren and young people should be told what decision was made, how their views were regarded and the reasons why action has proceed (Ibid.). General Comment 12 also requires that children receive feedback including following a court hearing whereby the judge [or other decision maker] explains the outcome (General Comment 12, para. 45). Overall, Lundy's model is significant when considering the four elements uniquely align with the rights of the child under Article 12 and its interpretation in General Comment 12. It is also an

important model in contemplating the United States' approach to child participation (based on parent rights) as opposed to a child rights-based approach (discussed in the next sections). Moreover, the empirical research discussed in Chapter 8 analyses whether the adults as decision makers are extending consideration to children in decision making processes, helping them to engage as a central part of these processes and contribute meaningfully to decisions including receiving feedback and how to seek redress.

4.6 The Status of the CRC in the United States

Whilst 193 United Nations State Parties, of a total of 194, have ratified the treaty the United States has not done so (UN General Assembly, United Nations Convention on the Rights of the Child, 1989). In the United States, the Administrations of Presidents Ronald Reagan and George H.W. Bush participated significantly in negotiating the text of this treaty, but they raised concerns and did not take action to sign or ratify it (Blanchfield, Congressional Research Service Summary, 2013). Under Article II, Section 2 of the United States Constitution, the President has the power to make and negotiate a treaty, but a treaty cannot bind the nation without the consent and approval of a two-thirds majority of United States' Senators present to vote and consent to it (Article II, Section 2, U.S. Constitution). Only then can it be returned to the President for final execution (Ibid.). The United States signed the CRC on the 16th February 1995 during President William Jefferson Clinton's Administration (Blanchfield, Congressional Research Service Summary, 2013). In 2009, following his first presidential inauguration, President Barack Obama announced that he would consider judicial review for ratifying the CRC but, to date, the United States has not ratified the treaty (Ibid.; 5).

Furthermore, the House of Representatives for the US Congress (federal legislature) introduced House Resolution 312 during the 101st Congress "[u]rging the President to submit the Convention on the Rights of the Child to the Senate for its advice and consent to ratification" (Ibid.; 6-7). This was passed by a voice vote on 17 September 1990 (Blanchfield, 6; 2013). There were similar resolutions introduced to the House and Senate during the 102nd, 103rd and 105th Congresses (Ibid.). At the same time, former Senator Jesse Helms opposed ratification of the CRC and introduced Senate

Resolution 133 in the 104th Congress (Ibid.). Other Members of the House of Representatives and the Senate have also expressed concern about the possible impact of CRC ratification “undermining parental authority and being contrary to the USA federal system” and thus, interfering with the relationship between states and federal governments (Ibid.). In terms of the democratic government structure in the United States, there are also debates concerning the Supremacy Clause of the US Constitution and whether ratification of the treaty would challenge this clause and, therefore, the Constitution’s position as the supreme law of the land (Article VI, Section 2, US Constitution; Blanchfield, 2013; 8). The basis for this reasoning is that the USA seldom ratifies international treaties whereby it requires: (1) conforming applicable domestic law to execute international human rights standards and (2) being accountable to the UN for reporting and UN State Parties as a world audience that can embarrass and humiliate the USA for failures to incorporate human rights.

4.7 The CRC as an Explicit Frame of Reference in the United States

Notwithstanding the failure to ratify, in the context of child welfare and juvenile delinquent, the USA has made explicit reference to the CRC and the major debates that focus on notions directly pertaining to its ratification. Perhaps the most significant reference was in 2005 when the consideration of the development of children as put forward in the CRC helped to inform a US Supreme Court decision to overturn the juvenile death penalty. Most notably in Roper v. Simmons, the United States Supreme Court held that the execution of juvenile ‘offenders who were under the age of 18 at the time’ of their capital crimes violated the Eighth Amendment (prohibiting cruel and unusual punishment) of the US Constitution (Roper v. Simmons, 543 US 551 (2005)). In writing the majority opinion for the court, Justice Anthony Kennedy referred to international treaties as ‘instructive’ for interpreting the ‘Eighth Amendment[’s]’ prohibition on cruel and unusual punishment under the U.S. Constitution (Ibid.). He referred to Article 37 of the CRC as expressly prohibiting it and acknowledged ‘every country in the world save the USA’ and Somalia (at the time) as having ratified it, thus demonstrating the “overwhelming weight of international opinion against the death penalty” (Ibid.).

Justice Kennedy acknowledged that the development of the child relates to their responsibility when convicted of a crime (Ibid.). The CRC recognises that children and young people are developing into adults, and the United States Supreme Court considered the development of the child and how it relates to their 'responsibility' when convicted of a crime (Ibid.). This relates, therefore, to a child's participation rights given that 'evolving capacities' and 'due weight' and maturity is considered in weighing up their voice when making decisions. It has also been recognised that a litigation approach is 'a powerful tool,' and it has "an important and valuable role to play in securing the rights of the child in all areas" (Kilkelly, n.d.; no page numbers). Consequently then, "ways must continue to be found to use available legal instruments to secure greater protection for children's rights and continuing attention should be given to maximizing the potential of the law to bring about change" (Ibid.). This "conclusion has been reached by some US courts, despite the US not even having ratified the Convention on the Rights of the Child" (citing the CRC as an "important factor" in Roper v. Simmons and Beharry v. Ashcroft (543 US 551 (2005); 329 F.3d 51 (2003); Ibid.).

It is also noteworthy that there are state and federal legislative agendas set by major non-profit organisations that make explicit reference to the CRC. Parentalrights.org, for example, is actively seeking legislative, political and media advocacy for the passing of parental rights amendments to state and federal constitutions (Parentalrights.org). These amendments speak explicitly against any treaty or international law superseding these rights, particularly the CRC, in order to maintain parents' rights to control their children's upbringing and socialisation (Ibid.). This organisation generally regards the CRC as a threat, the enforcement of which would undermine parental authority, particularly regarding parents' rights to decide their children's religious training and education and to use corporal punishment as a means of disciplining their children (Parentalrights.org).

4.8 The United States and the Parent Rights-Based Approach

In the United States, the parents' rights approach has deep roots in the nation's tradition and how children are 'socialise[d]' as discussed herein (Dailey, 2011). It is imperative to contemplate it prior to setting forth the applicable domestic law

regarding a role for children's participation in child welfare and juvenile delinquent systems. Originally, the concept of childhood in America regarded African American children as slaves and thus chattel property, whilst other children were regarded as the property of the father of the household (Bennett Woodhouse, 2006; 54). Even as the perspective began shifting to more paternalistic approaches to raising children and protecting and providing for their well-being, the United States Supreme Court under long-settled federal constitutional law, granted parents generally a right to privacy and to control the upbringing and socialisation of their children (Pierce v. Society of Sisters, 268 US 510 (1925)(Dailey, 2011)). This decision is not designed to "emancipate mature children from the authority of their parents and the state but instead to protect and socialize immature children into becoming autonomous adults" (Ibid., 2011; 2102).

The strength of parents' rights heavily outweighs the autonomy of children in the United States, as the 'socialis[ation]' process is intended to 'train' children within the family in order to exercise their individual rights as 'autonomous' adults and then be deemed as full 'citizens' under the United States Constitution (Ibid.). For example, the approach in the United States is further based on this long-established legal precedent providing parents with an 'implied liberty interest' to choose 'schools' where their children will receive 'appropriate' moral and religious education under the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Pierce v. Society of Sisters, 268 US 510 (1925); Dailey, 2011; 2116, 2122). In other words, parents can determine how to educate their children with authority in such matters, such as enrolling them in private school or in home schooling, deciding on their religious instruction and training and using corporal punishment to discipline them.

Within this context, the adult professionals working with African American girls and young women in the child welfare and juvenile delinquent systems are not necessarily required to involve them in contributing to decisions about their lives (as shall be discussed specifically under state statutory law discussed in the next sections). These professionals have leeway in decision making on behalf of the girls or young women, particularly in court-involved cases. This can continue until they reach the age of majority unless there is a viable permanency option for family

reunification, an adoption or permanent legal custodianship or supervised independent living. State law also requires including the young women in permanency planning including extending their court-involved foster care after the age of majority (18) (42 §§ 6302, 6351(e)). This approach can mean parents and professionals determine the level of participation afforded to children and young people when it comes to offering their opinion, their access to media and who they associate with (Articles 13-17). In a 'termination of parental rights' proceedings in the child welfare system, the United States Supreme Court further ruled that there is a "fundamental liberty interest of natural parents in the care, custody and management of their child" that "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State" (*Santosky v. Kramer*, 455 US 745 (1981)). As a result, children and young people involved in the child welfare system can face difficulties given the social norm attributing decision making to the authority of "a number of adults (parents, social workers, lawyers, judges), some of whom the child has never met and who do not know what is important to the child" (Van Bijleveld, et al., 2015; 130-131; Donnelly 2010; Cashmore, 2002). The next part of this chapter considers the involvement of children and young people in these systems and the role of participation, if any.

4.9 The Child Welfare and Juvenile Delinquent Systems

In Philadelphia, there are new child welfare reforms referred to as Improving Outcomes for Children: A Community Partnership Approach to Child Welfare ('IOU'). These new reforms are designed to overhaul this system with its focus on family and community involvement. However, they do not necessarily or consistently require that children's views are sought or listened to in decision making—at times they are included but adults as an 'audience' can use their discretion to dismiss or diminish their role in influencing decision making, particularly as they are not accountable to children for giving feedback in decision making (Lundy, 2007; 929).²⁰ At the same time, the opportunity to be heard in child welfare proceedings generally focus on how the legal representative for the child (the guardian ad litem) provides the 'best interests' for the child to the court and the

²⁰ The study refers to work on behalf of the Northern Ireland Commissioner for Child and Young People (Kilkelly, et al., 2006).

child's wishes, although the court does not regard discrepancies between the two as a 'conflict of law' under the Juvenile Act (as statutorily explained in chapter 3; 42 Pa.S.C.A § 6302, et seq). In terms of the opportunity to be heard in juvenile delinquent proceedings, there are federal constitutional 'due process' rights accorded to girls or young women, although there can be a question as to their level of understanding and their contributions to the decision making process. Generally, there is leeway, given the language contained in these laws that provides discretion to adults to 'influence' decision making without accountability (In re: Gault, 387 US 1 (1967)).

The new child welfare reforms are a "multi-year reform plan aimed at improving the safety, permanency, and well-being of the children and families served by the Department of Human Services" (DHS)(Improving Outcome for Children, About IOC).²¹ DHS further clarifies these reforms as "based on the premise that positive outcomes are achieved through child welfare services that are family-centered, community-based, culturally competent, integrated, timely, and accountable for results" (Ibid.). It is notable, however, that the term, 'child-centred' is not mentioned (Ibid.). The IOC Guidelines set forth a model with a "strong focus on Family Teaming, which brings together the family and service and system partners at key decision points over the life of a case" (Ibid.). Children are not mentioned on the homepage as contributors to decision making processes (Ibid.).

At the same time, however, the Community Umbrella Agency (CUA) guidelines issued for implementing the major reforms, do provide a role for children and young people to participate in Family Team Decision Making Conferences which are held at key decision making points: "safety and permanency decisions, youth placement moves, changes in service, routine intervals and case closing" (CUA Guidelines, 2015; 52). If children and young people are age '12 years or older,' they can attend, contribute to and participate in these conferences, which are also designed to be child and youth 'friendly' (Ibid.). Nevertheless, it is noteworthy under Articles 5 and 12 of the CRC, General Comment 12 and Lundy's model, children *regardless of age* can freely express their views in all matters, as well as have 'due weight' given to them

²¹ This source refers to the homepage of its website, <http://dynamicsights.com/dhs/ioc/whatis.php>.

in decision making based on their 'maturity' and 'age' (Article 5 and 12, General Comment 12, para. 21; Lundy, 2007; 935). The use of an age threshold for inclusion in the decision making processes is not foreseen here. It should also be noted that taking children seriously and respecting their views means scheduling conferences when they are able to attend. This is perhaps questionable regarding whether adults are taking them seriously in the decision making process, particularly given a tension between the professional business hours during which adults meet during the day and similar hours required for compulsory education until 17 years old in Pennsylvania (24 Pa.C.S.A §§ 13-1326). It is, therefore, especially pertinent given that truancy is a basis for allegations of parental neglect and adjudication of children and that young people in child welfare proceedings and social services are designed to prevent or address truancy.

It should also be recognised that under the 'Specific Guidelines for Formal In-Home Child Welfare and Child Protection Services,' the CUA case manager is required, "at a minimum, observation of and engagement..." with all 'household' children and youth even if they are not the caregiver's children (CUA Guidelines, 2015; 10). However, there is no definition provided as to the nature of 'observation and engagement' (Ibid.). At the same time, there can be multiple visits during a month by employees such as a case manager in order to ensure the safety of the child in the out-of-home placement and these guidelines do expressly state that this relationship is 'critical' but there is not a definition pertaining to the nature of this relationship between the child and this manager (Ibid.; 12-13). There are also guidelines stating that the caregiver such as a foster parent must have a 'positive' relationship with the child and the 'biological' family, but again there is no definition provided as to what constitutes this type of relationship (Ibid., 17). Whilst child participation is not referred to explicitly in the aforementioned relationships, there are detailed provisions for including children and young people in discussions regarding their 'permanency plan' at the time of placement, including explaining their rights in out-of-home placement and how to file a 'formal grievance' (CUA Guidelines, 2015; 20). In this instance, the CUA case manager is:

...responsible for full disclosure to parents, youth and the kinship or resource parents about the implications of placement. This disclosure includes: frank discussion with the child or youth regarding their permanency plan in a manner appropriate to their age and maturity. It is also expected that the

behavioral, mental, and physical health of the child or youth as well as their best interests are taken into account when engaging in these discussions (CUA Guidelines, 2015; 20).

The CUA case manager or congregate care provider or institution, if subcontracted, “must explain to children and youth in language that is understandable and clear given their age and mental ability what their rights are while in placement and the procedure for filing a grievance” (Ibid.; 21). The guidelines do not, however, ensure the provision of an ongoing relationship between the CUA case manager and the children nor for the nature of this relationship in decision making if it is continued. Although these guidelines state that ‘no right under statute can be excluded’ from agency policy, it is noteworthy that children and young people in the child welfare system also do not have the right to appear at court hearings as there is no formal notice by subpoena required in Pennsylvania which commands their presence at upcoming court dates (CUA Guidelines, 2015; 22; 42 Pa.C.S.A § 6302, et seq). Given that the CUA case manager provides testimony pertaining to the their needs and safety, without the child or young person present at such proceedings to be heard (if they choose), there is not necessarily accountability for decision making based on the child’s lived experiences. There may be access to a court hearing transcripts, but they exclude communications made off the record.

4.10 Child Welfare and Juvenile Delinquent Court Proceedings

This part of the chapter focuses on Article 12 and how it provides for a child rights-based approach that contrasts with the United States’ approach, particularly given the latitude permitted under some state statutes. Article 12, General Comment 12 and Lundy’s model are set forth in order to show how these proceedings must be tailored to support the children and young people who are participating in them. In this way, they are also considered regarding providing information to children and young people in order to inform the ‘best interests of the child’ standard in legal proceedings. Under Article 12, General Comment 12 and Lundy’s model, the processes in which children are heard and participate also include provision in full of accessible, child-friendly and age-appropriate information. Similarly, children and young people must be allowed to express themselves voluntarily and must be heard with respect on relevant issues. Moreover, proceedings are to be child-friendly and

inclusive, with trained adults available to facilitate their participation effectively, thus minimizing risk and ensuring accountability, as previously discussed under the CRC, General Comment 12 and Lundy's model.

4.11 Child Participation in Child Welfare Proceedings

This includes the provision that a State Party shall ensure an opportunity for children to be heard so they can make a choice as to whether to participate and provide their views or opt out (General Comment 12; Lundy, 2007). They can freely express their views and 'due weight' must be given to them including when informing the child's 'best interests' and their well-being (in (Articles 3, 6, 12, 24, 27, 28). Given the rights-based approach of Article 12, it was important to hear how the young women in the study described their experiences regarding advance notice of court proceedings and whether they were prepared (if they attended at all) in a child-friendly, age-appropriate manner which enabled them to participate. It is essential, for instance, that children be approached by their attorney before an initial court hearing in order to prepare for court hearings. This point has serious ramifications because a child may be party to a legal proceeding (some states do not regard the child as a party) yet not receive formal notice in order to be aware, prepared, present and able to participate in a hearing (as not required under the state statute in Pennsylvania). If this is not done, there is a "risk that the child may be under the impression that the GAL is representing his or her views only before the court," in which case lack of knowledge could undermine the extent of the child's participation in the proceedings (Parkes, 2013; 101).

In the United States, applicable federal domestic law requires the 'appointment of a guardian ad litem' (GAL, or child representative) to 'represent the child's 'best interests' in every case of abuse or neglect, which results in a 'judicial proceeding' (Child Welfare Information Gateway, 6; 2011; 42 U.S.C. § 5106a(b)(2)(B)(xiii)(II)). This advocate's main duties generally focus on the child's well-being and include 'meeting with the child,' 'independent investigations,' 'attending judicial and administrative proceedings,' 'monitoring cases for the fulfilment of court orders (such as for treatment and services)' and 'submitting reports' and 'best interests' recommendations for specific action to the court (Child Welfare Information

Gateway, Opening Overview, 1; 2012; statutorily explained in Chapter 3; 42 Pa.S.C.A § 6302, et seq).²² Whilst the GAL may have responsibility for these duties, the federal statute is very broad and allows states' discretion to legislate, resulting in a diversity of statutes, including those described, regarding the nature of child participation in hearings in the child welfare system (Lundy, 2007).

In other words, the appointment under state and federal law of the GAL is not necessarily providing children with an opportunity to be heard during a judicial or administrative proceeding. Initially, General Comment 12 and Lundy's model sets forth prerequisites (and Lundy's model aligns with it) whereby adults provide children with an 'environment' or 'space' so they are prepared to appear before the court and take advantage of the opportunity to be heard before the judge and contribute to decision making (General Comment 12, paras. 11, 34, 46; Lundy, 2007). Given the statutory language contained in the state law, however, there is actual leeway for the GAL to recommend that a child not appear before the judge on the basis that it is not in that child's 'best interests.' The GAL could further represent that this recommendation is partly or wholly dependent on information gained from the child during a meeting required under the state statute. Whilst the statute requires meeting with the child at least once receiving a court appointment as a GAL for the child, this meeting is not necessarily preparing a child for appearing before the court to express her views. This state law is particularly important as the GAL has significant discretion when making 'best interests' recommendations to the court, based on investigation and fact-finding. Ultimately, it is at the judge's discretion whether a court order is issued for the child's appearance at a child welfare proceeding in order to require her appearance at the next court proceeding.

This position contrasts with Article 12 of the CRC, as the right to be heard also can mean that a child may speak to a judge directly, preferably in chambers, in order to give an account of her lived experiences (Article 12). Whilst the international children's rights standard requires the child's input in informing the 'best interests'

²² The Child Welfare Information Gateway is a service of the Children's Bureau, Administration for Children and Families, US Department of Health and Human Services that provides access to print and electronic website databases and online learning tools for improving child welfare practice including resources that can be shared with families. This service provides applicable domestic law in child welfare in the United States including state and federal law (and USA territories) on the representation of children in child abuse and neglect proceedings.

principle, the statutory language in Pennsylvania does not require it in making such recommendations. The international children's rights standard is, therefore, essential because the GAL may interpret the facts pertaining to the case quite differently to the way in which the child or young person interprets them; thus, there is no guarantee her views are expressly made before the court and given 'due weight' in contributing to decisions with feedback. There is no statutory duty requiring the GAL to explain the outcomes of the court proceedings to the child or young person, particularly in discussing the judicial orders and the implications for implementing them (the court issues written orders at each judicial proceedings generally swiftly after each proceeding). General Comment 12 and Lundy's model, on the other hand, provide for the decision maker to explain how the child's 'influence' is accounted for at the time of final decisions (General Comment 12; Lundy, 2007). Specifically, Lundy's model further includes describing to children and young people about 'what' decisions were made, how their views were 'regarded' and the reasons 'why' action proceeded in a certain way (Lundy, 2007; 939).

Moreover, the duties of the GAL can vary from state to state, not only regarding the 'best interests' recommendations (required in 40 states, American Samoa, Guam, US Virgin Islands), but also in the presentation of the child's 'wishes' before the court (required in 25 states)(Child Welfare Information Gateway, 6; 2012). Whether the GAL considers the wishes of the child and how they are communicated to the court can rest upon what the state law requires and how the parties, representatives and judges regard the role of the child, the 'best interests' and the child's wishes in these judicial or administrative proceedings. It is important to note that state law uses the statutory language, 'child's wishes,' as opposed 'views' as used in Article 12 of the CRC. The implication of the child having 'views,' as set out in the CRC, is that they should be given the opportunity to air those views in court. This difference is crucial because the value of an international human rights standard regarding the child's right to be heard means that the child can state her views and opinions first-hand before the court. Meanwhile, 'wishes' can merely represent a desire or hope and do not necessarily require the child's direct representation and could therefore be presented inaccurately and/or incompletely (Child Information Gateway, 6; 2011).

In Pennsylvania, the state law allows the GAL considerable discretion in making representations to the judge about the ‘best interests’ and ‘legal interests’ of the child (42 Pa. C.S.A. § 6311(b)). In this state, the GAL is required to meet ‘as soon as possible’ with the child following the court appointment and on a ‘regular basis’ given what is ‘appropriate to the child’s age and maturity’ (statutorily explained in Chapter 3; 42 Pa.C.S.A § 6311(b)(1)). The GAL is required to explain proceedings to children as appropriate to the child’s ‘age’ and ‘mental and emotional condition’ and to advise the court of the child’s “wishes to the extent that they can be ascertained...[and] whatever evidence exists to support the child’s wishes” (statutorily explained in Chapter 3; 42 Pa. C.S. A. § 6311(b)(8)). In this state, if a difference exists between the ‘best interests’ of the child and the child’s wishes, the GAL must represent the ‘best interests’ of the child and present evidence (such as child protective services records and ‘medical, psychological, school’ and related records) in support of his or her ‘specific recommendations’ for purposes of appearing and representing the child before the court (statutorily explained in Chapter 3; 42 Pa. C.S.A § 6311). Despite the fact that some countries, although having ratified the CRC, do not adhere to client-directed counsel whereby the attorney solely represents the child’s interests, the international children’s rights standard remains worthy. This standard focuses on the opportunity to be heard and thus potentially challenges applicable domestic law in the USA where it is not necessarily required to be child-centred or child-friendly in order to ensure participation if able to participate before the court at all. Whilst the state statute may set forth the GAL ‘ascertain’ the child’s wishes, there is also considerable leeway for the GAL to act independently (statutorily explained in Chapter 3; 42 Pa.C.S.A §6302, et seq).

As it stands in Pennsylvania, if the GAL presents his or her ‘best interests’ recommendations to the court and child’s wishes are not consistent with them, the court will not consider there to be a conflict of interest as per the state statute (42 Pa. C.S.A. § 6311(b)(9)). This statute refers to reporting the “appropriateness and safety of the child’s placement and the services necessary to address the child’s needs and safety” (42 Pa.C.S.A. § 6311). There may well be competing tensions, however, between what the GAL seeks to present to the court as the ‘best interests’ of the child and what the child states as her wishes, particularly as the GAL has discretion in

presenting the nature of his or her relationship with the child to the judge. Despite the statutory law described above, regarding notice to the child about a legal proceeding, the actual language does not expressly state that the child has this right. This is significant because there are also many adults involved in these proceedings (cases are often multi-party, multi-attorney and with a number of witnesses) and thus, any discretion permitted under the statute may further allow for the marginalisation or exclusion of the child's wishes.

The international children's rights standard contrasts with this discretion afforded to adults and the empirical research for this study provides an opportunity to explore it within the child welfare system in Philadelphia. In discussing their participation, or lack thereof, the young women characterised their relationships with the GAL and how this may or may not have been communicated to the judge. The opportunity to be heard was contingent on their receiving the notice (even if informal) required to know in advance and appear for a hearing. However, under General Comment 12 and Lundy's model, there would be no opportunity for adults to opt out and fail to encourage the girls and young women having a stake in the decision making process, including having the option to represent their views to the judge (directly or indirectly). In doing so, they would then be able to contribute to the overall decision making process and potentially reduce their need for court-involved social services and interventions in their future lives.

As in the United States, the CRC considers a State Party's obligation to provide for the 'best interests' of the child as necessarily ensuring children's 'protection' and that they receive the 'care' 'necessary for their well-being' (Article 3(1); General Comment 14, para. 71). In addition, a State Party must take all available measures to implement and ensure a child's rights are respected including 'protect[ing]' her from persons who care for her (regardless of legal status as a parent) whilst at the same time, not subjecting a child to 'arbitrary or unlawful interference' with her 'privacy' whilst living with her family (Articles 4, 16, 19). The 'best interests' standard under the CRC means that not only should the child welfare system address allegations of abuse and neglect due to failure by parents, legal guardians or persons legally responsible for caring for the child, but it should also consider the human rights of survival, development, health care, education and an adequate standard of living

(Articles 6, 24, 27, 28). However, the CRC requires that the child's views inform the 'best interests' standard, whereas there is no guarantee that the GAL represents them in the USA (Pa.C.S.A § 6302, et seq). As we have seen, he or she is only required to state 'wishes' that do not necessarily reflect how the child describes her lived experiences, her thoughts and feelings about involvement in the systems and/or what she desires in order to improve her life circumstances. In considering the literature discussing children as rights-bearers, their participation is essential to interpreting the 'best interests' standard and to contemplating parental (or GAL) justifications for intervening in children's lives, but the GAL is not required to allow for the child to 'voice' her views or justify why she is intervening in the child's life and the basis for her decisions before the court in the USA (Freeman, 1983).

In the United States, there are '13' states (plus Puerto Rico) that appoint counsel for the child where the attorney solely represents the child and her interests in a child welfare proceeding (Child Welfare Information Gateway, 2012; 7). These children therefore, have a much higher likelihood of participation in child welfare proceedings (although there may be age-thresholds or other requirements in order to have an attorney appointed) (Ibid.). It is important to recognize that an attorney for a child has a duty of 'loyalty' in representing the child (Model Rules of Professional Conduct, Rule 1.7—national ethics rules in the United States for all attorneys).²³ In an attorney-client privileged relationship, the attorney has an obligation to maintain confidentiality (unless, for instance, reporting additional abuse or neglect) and thus, the child may feel more at ease sharing what happened and what it feels like to have lived through their experiences, particularly given that they do not have a representative with other vested interests (Model Rules of Professional Conduct, Rule 1.6).

This approach to appointing an attorney for the child can only mean that the attorney will have a vested interest in the on-going process in judicial and/or administrative proceedings until final discharge by the court, which can take months or years. It is also much more likely that the child will have an opportunity to appear before the court with her appointed attorney setting forth her interests and making arrangements

²³For purposes of practicing law in a state, attorneys must pass a state bar exam and a national professional responsibility (ethics) exam. Some states allow reciprocity with other states.

for her appearances—including in the judge’s chambers if desired. In these situations, the international children’s rights standards are valuable because they are designed to provide notice of hearings as well as representation by an attorney appointed for the child and, moreover, to ensure a meaningful role for her in the judicial or administrative proceedings which are centred on her life. In terms of the empirical research for this study, the young women described their relationships with their attorneys, and how they affected the presentation of their interests before the court and therefore the impact on addressing individual needs and achieving permanent homes which the young women regarded as suitable.

4.12 Child Participation in the Juvenile Delinquent Court Proceedings

The juvenile delinquent system is intended to provide a ‘balance[d] attention’ of community protection and ‘accountability for offenses’ committed, and to ‘develop competencies that enable children’ to become ‘responsible,’ ‘productive,’ ‘community members’ (42 Pa. C.S.A. § 6301(2)). In Pennsylvania, the juvenile delinquent system is designed for children committing delinquent acts and delivers programs of “supervision, care and rehabilitation” as “consistent with protection of the public interest” (42 Pa. C.S.A. § 6301(2)).

Under the CRC, children must have the option to remain silent in all stages of the juvenile delinquent processes (including with law enforcement between the arrest and release to a parent, legal guardian or person responsible for their care and they must not be compelled to confess guilt) (Article 40(2)(b)(iv); General Comment 10, para. 23; General Comment 12, para. 58). At the same time, they must be ‘informed promptly and directly of the charges’ against them (this may be through their parents or legal guardians, if appropriate) (Article 40(2)(b)(ii)). As a procedural guarantee, the State Party must allow for and ‘take into account’ the age and ‘situation of children in conflict with the law’ during penal matters, unless this is not considered to be in their ‘best interests’ (Article 40(2)(b)(i); General Comment 10, para. 23(c)). It is important to assess how far states in the USA do adhere to this, and inform young people about their rights. What happens in practice can have a significant effect on the number of children and young people in the juvenile delinquent system

and their subsequent routes through that system, particularly if they make admissions or confessions, which may potentially lead to deeper penetration in the system.

The CRC approach contrasts with that of the United States because there is a diversity of interpretation and application of a 'right to counsel' under federal constitutional law and this can vary among the juvenile delinquent systems of different municipalities, counties and states (In re: Gault, 387 US 1). There is, for instance, a wide range of state laws regarding whether the child shall receive free legal aid, whereas the Beijing Rules require financial assistance (particularly as it relates to whether a young person has an opportunity to be heard)(Beijing Rules 7.1 and 15.1). This approach under the CRC, General Comment 10 and the Beijing Rules 7.1 and 15.1 requires legal counsel and free legal aid. The CRC, General Comment 10 and the Beijing Rule 7.1 challenge thinking and practice in the United States because the right to counsel for a young person is not precluded due to indigence. Some states consider parents' finances when deciding whether the child can afford counsel, with states such as Florida, Delaware, Georgia and Tennessee charging application fees for determining indigence and the right to free legal aid (Juvenile Justice Information Exchange, Reform Trends, Appointment of Counsel, jjie.org).²⁴ There are very real implications in practice as the numbers of African American girls and young women in the systems may be seen to increase where there can be errors made in juvenile delinquent court level as a result of a lack of meaningful legal representation working to protect their interests.

This point is critically important in the United States because young people may unknowingly waive their right to counsel as they do not understand the notion of waiver and its implications for fairness when involved in the juvenile delinquent system. The implications of so doing are wide reaching and may have a real bearing on the version of the case put forward by the attorney. It will also mean that they have no assistance when it comes to understanding the legal jargon used in litigating a case (Juvenile Justice Information Exchange, jjie.org). Importantly, they may never have had a lawyer in order to discuss what it means to waive counsel because a state

²⁴ The Juvenile Justice Information Exchange is an online publication providing extensive juvenile justice information, including specific domestic law in the United States in order to assist the general public, professionals, children, young people and families involved in the system.

statute did not provide legal representation at this stage of the juvenile delinquent proceedings—a Catch-22 situation. Children’s ability to waive the right to counsel in juvenile delinquent proceedings varies from state to state; state guidelines for permitting a juvenile’s waiver of the assistance of counsel include: (1) judicial colloquy (knowingly and voluntarily waiving counsel themselves), (2) parental ‘presence, concurrence or consultation,’ (3) ‘meaningful attorney consultation,’ (4) a ‘presumption against waiver that can only be rebutted by formal hearing’ and/or (5) ‘age’ and/or ‘type of offense’ (Juvenile Justice Information Exchange, Reducing the Number of Youth Who Waive Their Right to Counsel, Juvenile Justice Information Exchange, jjie.org).²⁵ There are ‘13’ states that prohibit the possibility of waiver for certain offenders given age-thresholds, stages of the proceedings and/or severity of offense under some state laws (Ibid.). Whilst there is strong advocacy in the United States to prohibit waiver of counsel, the number of states prohibiting it is a minority (Ibid.). Moreover, it is possible children and young people need counsel at each stage of the proceedings: custody, arraignment, detention hearing, pre-trial hearing, adjudication and disposition hearings, expungement and appeals hearings, but states are not necessarily required to provide counsel at all of these stages (In re Gault, 387 U.S. 1 (1967)). Consequently, there is a significant possibility that African American young women may have had increased involvement in the juvenile delinquent system due to a lack of information and understanding about the importance of having an attorney.

The United States Supreme Court does recognise, however, that children and young people have due process rights at certain stages of juvenile delinquent court proceedings. This Court holds that whilst juveniles do not possess all the due process rights accorded to adults under federal constitutional law, neither the Fourteenth Amendment nor the Bill of Rights is “strictly for adults” and the hearing must

²⁵ Waiver of counsel is a major concern for young people involved in the juvenile justice system. In Pennsylvania, the Interbranch Commission on Juvenile Justice Report that 54 percent of the Luzerne County youth waived their right to counsel between 2003 and 2008.

<http://www.pacourts.us/assets/files/setting-2032/file-730.pdf?cb=4beb87>. When former judge Mark Ciavarilla presided in this county, the rate of waivers of counsel was 10 times the state average in other counties. The former judge received kickbacks for sending young people to out-of-home juvenile facilities for minor offenses, often when they had unknowingly waived counsel before the court. There is a documentary about the “*Kids for Cash*” scandal and how the Juvenile Law Center in Philadelphia investigated and uncovered it. Pennsylvania now has strong laws prohibiting children and young people from waiving their right to counsel. The website, jjie.org, discusses this tragedy.

“measure up to the essentials of due process and fair treatment” (*In re: Gault*, 387 US 1 (1967), citing *Kent v. United States*, 383 US 541 (1966)). The United States Supreme Court recognises that children under 18 years old have a right to counsel at the adjudicatory stage of a juvenile delinquent court proceeding and to additional due process safeguards under the Fifth and Sixth Amendments to the United States Constitution (i.e. timely notification of charges, the right to confront and cross-examine witnesses, the privilege against self-incrimination) (*In re: Gault*, 387 U.S. 1 (1967)). Given that this United States Supreme Court decision concerns the right to counsel for the young person involved in an adjudication of delinquency, their attorney must provide an effective defence that seemingly mirrors the adult criminal justice system and at the same time, assist them as a young person attempting to understand the juvenile delinquent court processes (*Ibid.*). In *Gault*, the United States Supreme Court did state that the “juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense [*sic*] and to prepare and submit it” (*In re: Gault*, 387 US 1 (1967)). The Court further compared the right to counsel during a delinquent hearing with an adult’s right to counsel in a criminal trial because a young offender could be “subject to loss of his liberty for years,” which is “comparable in seriousness to a felony prosecution” (*In re: Gault*, 387 US 1 (1967)).

Nevertheless, there is a serious concern about procedural due process rights for juvenile offenders in the United States. The young person is not an adult, and under the CRC and the Beijing Rules, there is a need for her to have “sufficient knowledge and understanding of various legal aspects of the processes of juvenile justice” and “adequate information about the charges, content and course of the process and the possible sanction or measure to be ordered” (Liefwaard, 2015; 249; Rap, 2013; 70). In practice, the legal representation provided by defence counsel in juvenile delinquent cases requires specialised knowledge and experience in order to provide effective counsel and ensure fundamental fairness (Rap, 2013; 46). In the United States, there are children who are represented by defence counsel who are not trained to competently represent them and/or have unmanageable ‘caseloads,’ and do not receive adequate ‘compensation’ and cannot devote ‘sufficient’ time or ‘resources’ to ensuring fundamental fairness (including preparing a proper defence and setting it

forth before the court)(Juvenile Justice Information Exchange, Providing Sufficient Resources and Tools for Juvenile Defence Counsel, jjie.org).

Under the CRC, however, children must have ‘appropriate assist[ance]’ in the form of an individual who is specially ‘trained’ to represent juveniles (Ibid.). This person will help with the ‘preparation and presentation’ of the defence in order to fully realise procedural due process guarantees regarding purported charges alleged by the prosecution, ensuring a fair trial before the court (Ibid.; Article 40; General Comment 10, paras. 23(f), 49). In March 2015, the United States Department of Justice filed a ‘*Statement of Interest*’ in a state court of Georgia outlining its concern about the state county’s failure to satisfy ‘due process’ requirements under federal constitutional law (Statement of Issue, Department of Justice). The instances of this type of statement being filed in state court by the federal government are rare, and the Department also advocated that “every child who faces the loss of liberty should be represented from their first [court] appearance through, at least, to the disposition of their case by an attorney with training resources, and time to effectively advocate the child’s interest” (Ibid; 1).

What is disconcerting, however, is that whilst the federal government can have a role in a state court case as stated above, it does not mean that effective exercise of children’s due process rights are generally applicable under domestic state laws, not that procedures are child-friendly and age-appropriate in order that young people are prepared and can partake in their legal representation. The extent to which children can exercise their due process rights rests on having a competent attorney to represent them from the outset through to disposition. This attorney should help them understand those rights, make informed choices when exercising them and expressly object to any violations on record. This provision is vital given that children can be held criminally responsible for alleged crimes, just as in the adult system (including having secure detention imposed as a sentence). This being the case, they should have an ‘opportunity to be heard’ and a right to counsel. It is important to clarify that whilst they have the ‘right to freely express’ their views on all matters, their attorney is also critical for preparing and presenting a defence. They may need serious advice and guidance in an attorney-client privileged relationship

wherein they understand that discussing the case with third parties can waive confidentiality with legal counsel.

Under the CRC, General Comment 10 and the Beijing Rules there are duties and responsibilities for providing meaningful legal representation to young people. When considering these, states have some leeway in implementing federal constitutional law providing for due process rights for young people in the USA (*In re Gault*, 367 U.S. 1 (1967); jjiie.org). As we have seen, there are a variety of state statutes, each with differences in interpretation and application of the right to counsel under federal constitutional law. This approach under the CRC, General Comment 10 and the Beijing Rule 7.1 is important since children's and young people's level of vulnerability in negotiating the juvenile delinquent system is high and they may not understand its processes. They, therefore, need an attorney who can listen and take them seriously as well as explain these processes as they move through this system (General Comments 10, 12; Lundy, 2007). This kind of support, further, helps to "facilitate an atmosphere of understanding" (Rap, 2013; 46). It is fundamental that the child should have the amount of time necessary to tell her side to the story. In the telling, she should be shown genuine interest and respect and encouraged through appropriate questions, to go into detail (Lundy, 2007; Rap, 2013; 124, 129).

Serious consideration must be given to the fact that children, as a result of their 'age,' 'maturity' and 'evolving capacities,' do not know and/or understand about the nature of their due process rights (Article 5). Having an attorney available to represent and protect their interests is essential to "their treatment in court [...should] promote a child's sense of dignity and well-being" (Articles 5, 12; General Comment 10 (IV)(D)(23)(f); Beijing Rule 14.2; Rap, 2013; 46). In some instances, they may be particularly vulnerable and susceptible to making admissions or confessions related to their arrest and charges and/or to exploitation, abuse and neglect in violation of their rights and human dignity (Ibid.). They may not know that they are entitled to 'challenge the legality of their deprivation of liberty' (if detained and/or imprisoned per disposition order) before 'a court or other competent, independent and impartial authority,' or that they can expect a prompt 'decision' on any action (Article 37(d); General Comment 10, para. 82). Given demographic realities, it is reasonable to suggest that the disparities discussed can have a seriously detrimental impact both on

the numbers of African American girls and young women in the systems and the nature of their experiences and routes through those systems.

4.13 Conclusion

This chapter sets forth Article 12, General Comment 12 and the conceptualisation of ‘participation’ and what it means for children and young people to have a role in decision making about their lives, particularly those involved with the child welfare and juvenile delinquent systems. General Comment 12 and Lundy’s model are important in discerning the level of participation afforded to the young women who were part of the empirical research. Whilst the American tradition gives authority to parents to decide how to socialise their children into becoming full citizens upon reaching the age of majority, it does not assure meaningful participation by children and young people as rights-bearers and subjects in their own right as they grow into adulthood (Dailey, 2011; 2116). Instead, this tradition tends towards a failure to respect children’s capacity to freely express their views and to have an opportunity to be heard in judicial or administrative hearings as set forth under Article 12. Children and young people who are marginalised and excluded in the child welfare and juvenile delinquent systems are particularly affected. They are often regarded as helpless (child welfare) or treated without fundamental fairness and as less than human (juvenile delinquent). Whereas further Article 12 represents a comprehensive, undeniable frame of reference for examining ‘participation’ rights, it serves further to inform the USA about making legal and public policy reforms in alignment with its treaty language.

Chapter 8, thus, focuses on how the young African American women described their life narratives and whether they felt listened to, taken seriously and respected when involved in these systems. The empirical research as shall be analysed further explores Article 12, General Comment 12 and Lundy’s model and whether the young women had a voice, space, audience and/or influence in decision making during their involvement in these systems. Given that the young women studied have had involvement in both systems, their life narratives may uncover whether the number of professionals and multi-agency involvement created ‘messiness’ and confusing situations wherein they felt unable or diminished in their ability to

meaningfully participate in judicial and administrative proceedings. It will also be important to assess whether the professionals were truly hearing, taking seriously and respecting the child's views, whether these views were used to inform and influence decision making during their time in these systems and what impact these systems had on their lives.

CHAPTER 5:

The Shopping Mall Story: Qualitative Methods

5.1 Introduction

This chapter outlines the methods adopted when conducting the research forming the basis of this thesis. It explains how the study's approach and methodology were selected and the implications of making these decisions. The thesis adopted a qualitative research approach whereby young African American women were invited to share their life narratives as related to their past involvement in the child welfare and juvenile delinquent systems in Philadelphia. A theoretical framework, based generally on narrative inquiry, was adopted when analysing the interviews of the young women and developing findings and conclusions (Clandinin, 2007). For the purpose of reflecting on the research process, this chapter further considers 'outsider/insider' literature in order to contemplate the role of a female, middle-class, middle-aged Caucasian researcher interviewing research participants who are young African American women. The women were primarily from deprived urban neighbourhoods in Philadelphia and all of the participants had past involvement in the child welfare and juvenile delinquent systems.

The research considered the following three core questions: (1) the nature of overrepresentation of African American girls and young women in the child welfare and juvenile delinquent systems, (2) the routes the young women experienced as they entered, moved within and exited these systems and (3) whether the young women thought that they were provided with opportunities to participate in decision-making when involved in these systems.

At present, there are a limited number of qualitative studies focused on the lives of young African American women involved with the child welfare and juvenile delinquent systems in the USA. One retrospective study used semi-structured interviews with former female juvenile offenders after they reached adulthood. However, this research did not explore their involvement and routes taken through the child welfare and juvenile delinquent systems. It focused instead on adult

outcomes that were subsequently measured (Bright, Ward and Juno Negi, 2011). A further retrospective study compared the experiences of incarcerated men with former juvenile justice involvement with males who had both child welfare and juvenile delinquent experiences (Kapp, 2000).²⁶ Research studies have tended to present entry into the child welfare system and movement into the juvenile delinquent system as a sequential, linear process associated with later delinquent outcomes, whereas the routes taken by the young African American women can be 'messy' as they enter, move within and exit these systems sometimes at different stages of their childhood and adolescence (Jonson-Reid, 2004; Jonson-Reid, 2002). More currently, Kapp conducted in-depth 'qualitative' interviews with 'eight' incarcerated men who had child welfare and juvenile delinquent involvement in order to trace their 'pathways' to prison with a focus on their lived experiences and the interventions and services in both systems (Kapp, 2015).

There is ample information about the typical profiles of young women involved in the child welfare and juvenile delinquent systems, but their voices about personal experiences are often missing. For example, one study profiled young women in the juvenile delinquent system who were also living in secure detention (Stanislaus County, Girls Juvenile Justice Initiative, 2010; 17). This study was based on percentages attributed to their common personal features and overall profiles such as family justice involvement, educational problems and experience of trauma, including abuse and neglect (Ibid.). Whereas there are extensive qualitative and quantitative studies describing the 'causes' of juvenile delinquency, there is minimal information about how the young African American women perceive and understand their life narratives and their routes and participation in both of these systems (Zahn, 2009). Likewise, there are multiple quantitative studies focusing on 'crossover' systems when children and young people have a connection to the child welfare and juvenile delinquent systems in the United States, but they do not include actual life narratives as a basis for exploring the nature of the young women's lived experiences in the systems (Herz, et al., 2010; Conger and Ross, 2001).

²⁶ This study does not include a comparison group of African American women.

5.2 Research Participants

Prior to commencing the study, it was decided that a minimum of 25 interviews would be conducted. This number of interviews would provide a reasonable number of participants and allow for a manageable exploration of the diversity of their life experiences in the child welfare and juvenile delinquent systems. Limiting the study to 25 interviews meant that an understanding of young African American women's experiences could be developed whilst also affording time to focus on the distinct experiences of each participant.²⁷ The basis for deciding the number of interviews also reflected how the narrative approach to qualitative research "necessitates hav[ing] a small sample because of the detailed and intensive work required for the study" and how "[p]articular individuals are chosen with characteristics relevant to the study" (Anderson, 2010; 4). This approach focuses on the participants' lived experiences in order to understand the young women and gain insights relevant to the question of their overrepresentation in and routes within the child welfare and juvenile delinquent systems, and how they described their ability to participate (if at all). The age range for potential participants mainly was 18-25 to enable them to share their life narratives as near as possible to the times of their involvement in the systems. Overall, the narrative approach for the study provided retrospective interpretations by the young women on how they defined, organised and attributed meaning to their lived experiences. The approach encouraged a focus on life "as it is lived, felt, undergone, made sense of, and accomplished by human beings," rather than on generalisations from a large number of participants to gain statistical information from a "distribution in the population" (Polkinghorne, 2005; 138, 140).²⁸

Specifically, the approach adopted in this study allowed for gaining a contextual understanding about the young women's general background and how they described their lives leading up to involvement in these systems. Furthermore, it gave

²⁷ Overall, the research participants for this study were young African American women between the ages of 18 and 25, with the exception of three women who were 26 and one who was 28. All of the young women were involved and discharged from the child welfare and juvenile delinquent systems in Philadelphia. One participant had a Puerto Rican mother; the other research participants had African American mothers and fathers; all participants self-identified as being African American (although the Puerto Rican young woman did mention identifying as Puerto Rican as well).

²⁸ It is important to recognise that there are scholars who argue that the life story has a 'plot' with a beginning, middle and end (Polkinghorne, 1995), whilst other academics do not regard life stories as linear (Savin-Baden and Van Niekerk, 2007).

participants the opportunity to describe and express their perspectives about how they interacted with the systems throughout their childhood and adolescence in close detail, capturing their entire experiences until the point of their discharge. This approach allowed the young women to share their thoughts and feelings, reflecting on how they felt they were treated when involved in the systems and to what extent they were able to participate in decision making about their lives. They were also able to make recommendations for change based on their experiences. It was therefore felt that the rich insights gleaned from the comprehensive retrospective life narratives of the young African American women would contribute new knowledge to the field. Rather than focusing on children and young people currently in the systems, the retrospective narrative approach allowed the young women to give detailed accounts revealing the complexities which 'do not have a conclusion or may not progress in a linear order' but are an inherent part of our 'lived experiences' and therefore of the "stories we tell" (Savin-Baden and Van Niekerk, 2007; 464).

5.3 Sampling and Data Collection

Initially, attempts were made through established agency contacts to access and identify young African American women as potential participants. Prior to conducting the study, a list of agency providers, non-profit organisations and attorneys who work or have worked with young African American women (and could provide referrals to potential participants) were identified. Early in the empirical research, however, it was discovered that using agency contacts was a slow, drawn out process and, as gatekeepers, agency referrals could influence the types of participants included in the study. Gatekeepers may have the power to make determinations about individuals who "might be more eligible to participate in the research than others" and thus, their referrals may be biased (as demonstrated in research studies involving disabled individuals) (Morrisey, 2012; 4). The resulting narrative stories could be seen as promoting gatekeepers' ideas about a 'certain' type of person and what it means to be that person (in Savin-Baden and Van Niekerk's study, for example, the type of person referred to represented what was perceived as a 'good' nurse or an 'excellent' teacher in his or her profession) (Savin-Baden and Van Niekerk, 2007; 463). If the gatekeepers in this instance were able to influence who participated in the research, the findings and analysis of the data may be skewed

and unrepresentative. In terms of the thesis, it was particularly important to avoid having gatekeepers make decisions about who would be deemed appropriate to participate and/or influence their contributions during the interviews.

Furthermore, it was discovered from two substantive meetings with agency providers that they were focused on writing sub-contracts for their funding linked to major new child welfare reforms in Philadelphia. There was a concern that the ‘survival mode’ of agency providers could affect the selection of potential participants as the providers were under intense pressure to present themselves in the best light to funders. It was considered that the choice of young women might reflect a pronounced need to make a good impression and exemplify the agency during the new funding process and sub-contracting. It also became apparent that the “issue of confidentiality was important” where interviewees were part of an organisation and may not be comfortable disclosing information that could be considered private or sensitive (Ibid.). In this instance, the issue was resolved by using pseudonyms and providing a letter undertaking to treat all information obtained in the interviews as confidential (Johl and Renganathan, 2010; 45).

There were also multiple communications with directors at: (1) an educational setting serving young people returning to school to earn their high school diplomas, (2) a women’s shelter, (3) an organisation serving young people in foster care, including those who have turned eighteen and exited the child welfare system, (4) an LGBT organisation serving young people through the age of twenty four. In the first two instances, there were site visits in order to give a short presentation and distribute study information for outreach with potential participants. In the last two instances, the directors agreed to display study information on their community bulletin boards. However, it became evident that in gaining meetings with stakeholders, a number of drawbacks prevailed including experiencing ‘waiting periods’ for initial meetings, time consumed using public transport to travel to scheduled meetings and the stakeholders’ reluctance to make referrals to former clients due to confidentiality issues. There were no referrals to young African American women based on these direct contacts and meetings, therefore, nor did any young women initiate contact having seen the notices.

This experience with gatekeepers and the slow, drawn out process which failed to yield any referrals was discussed with the research supervisors. It was recommended that another strategy be utilised in order to identify potential participants. The strategy was then modified in order to identify a safe location where young African American women could be approached directly without a gatekeeper. In late January 2014, after visiting many public locations, an urban shopping mall, The Gallery, was identified. It was recognised that young African American women often sat in the underground food court talking and eating meals from fast food restaurants. This shopping mall is located in downtown Philadelphia between 9th and 11th Streets and Market Street. It is also a main transport hub with two subway stops and one Regional Rail stops on the underground level and numerous bus routes meeting at street level. People can easily access the mall from many locations throughout metropolitan Philadelphia, including several city areas with deprived neighbourhoods. Given the convenience of its location in downtown Philadelphia and its general popularity with young African American women, it afforded a worthy location from which to conduct purposive sampling and approach young women about participating in the study.²⁹ The good transport links throughout Philadelphia to The Gallery ensured a diverse and random sample of participants. When asked, most participants took public transport, mainly from deprived neighbourhoods such as north Philadelphia. The exception was one participant who stated she came by car and used a parking lot when visiting the mall (Research Participant 16).³⁰

5.4 Approaching Potential Research Participants

Purposive sampling was used in conducting the study. This method of sampling meant that potential participants were identified based on the requirements of the study; that is young African American women (18-25 years old) with previous involvement in both the child welfare and juvenile delinquent systems in Philadelphia. It is worth noting that some young African American women may have initially regarded the researcher with distrust and suspicion; thus, there was a need to be mindful of the additional time required to identify young women who desired to

²⁹ It is noteworthy that there were no instances of snowball sampling in this study, which perhaps allowed for a diversity of women to participate.

³⁰ Hereinafter RP refers to 'research participant.'

participate whilst ensuring a sufficient number of interviews to provide an indicative sample for the thesis. Studies such as the Tuskegee Syphilis study, despite being conducted decades ago, continue to raise serious concerns about a white researcher's motives for selecting young African American women to interview (Freimuth et al., 2001; 799). In 1932, the United States Department of Public Health initiated a study of untreated syphilis among rural African American men in Alabama; they omitted to elicit informed consent from their subjects to 'see how the disease spreads and attacks healthy human cells' (Ibid.). From the late 1950s through to 1972 when 'penicillin' became available, the participants were prevented from receiving treatment and many men died (Ibid.). Consequently, the legacy of this study (which can apply to other fields) and other past abuses, is that it is 'especially difficult' to engage African Americans in clinical and public health research (Ibid.; 797).

In late December 2013, the researcher travelled from England to Philadelphia and lived there through April 2014 in order to conduct four months of empirical research. Due to time constraints, it was imperative that potential participants were screened swiftly to discern whether they met the eligibility criteria for the study. The screening process required a systematic and factual approach when asking potential participants about any involvement in the child welfare and juvenile delinquent systems. This process was, thus, focused directly on obtaining critical information from potential participants through a short 'elevator' pitch. Initially, the women were approached at their tables in the food court of The Gallery; the researcher introduced herself, explaining that she was interviewing young African American women between 18 and 25 years old. This initial approach quickly screened eligible participants by age without offending women by asking their age directly. Ultimately, the study included young women in this age range, the exceptions being three participants who were 26 years old and one who was 28; they were included as their interviews provided substantive information.³¹

³¹ It is noteworthy that there are established business practices regarding market intercept interviews in shopping malls where the Market Research Association has an MRA Code of Market Research Standards in the USA (<http://www.marketingresearch.org/issues-policies/mra-code-marketing-research-standards>). It is further noted that although the empirical research was an academic study, these types of business research interviews can generally be considered as analogous to ethics standards and in compliance the ethical requirements of the University of Liverpool.

If a potential participant met the age criteria, she was told about the remuneration for participation (\$15) to cover transportation and a meal. It was further outlined to potential participants that two further qualifications were required to be eligible for the study: they had to have experience with both the DHS/child welfare system and the juvenile delinquent system in Philadelphia.³² Usually, the young women paused when answering these questions. The questions were sensitive in that they asked the women to share about child abuse, neglect and/or offending, revealing parts of their lives which may not depict them in a positive manner. They were, however, intended to be clear and to swiftly identify whether potential participants had contact with both systems and if they had an interest in being interviewed.

If the young women indicated that they had experience of both the child welfare and juvenile delinquent systems before 18 years old (the age of majority in the USA) and showed interest, the screening process further discerned their eligibility by asking two follow-up questions. These questions were intended to show that the researcher was informed about the systems and was serious about the study and hearing the young women's life narratives. The initial questions focused on whether the young women had had contact with a DHS social worker and involvement in the child welfare system and if they had had an arrest in the juvenile delinquent system. If necessary, further details were requested in order to clarify their involvement. Throughout the screening process, these two questions consistently served to identify a sufficient level of involvement in these systems in order to proceed to in-depth interviews which would provide detailed information about their routes through and participation in the systems. It was also decided to pose some questions that asked for specific information in order to see if they were prepared to share their personal lives and reveal something of themselves and their involvement in these systems.

The screening process highlighted a key point: the young women generally had a real interest in telling their life stories and how they had been treated when involved

³² Initially, approaches to potential research participants during the screening process offered lunch and two bus tokens to cover costs associated with the interview. After approximately three weeks, two interviews had been conducted in the food court. Although the screening process was generating contact information for several eligible women, the follow through to interview was disappointing. With the primary supervisor's agreement, the remuneration for the interview was modified to provide \$15 for lunch and transport. This change precipitated the remaining interviews, all of which were completed by 30th April 2014.

with the systems. In some instances, the young women indicated that no one had previously asked them about their involvement, how they felt about it and what changes they would recommend (thus, treating them as the experts). It is noteworthy that this approach “may empower ‘invisible’ people who have traditionally been marginalised by race, class, gender, and/or sexual orientation” (Martin-McDonald, 1999; 22). Their stories “have the potential to transform the cultural story by challenging the norm” (Ibid; 22). It was also explained before the interview that they did not have to discuss any subject about which they felt uncomfortable and/or did not want to share. This approach also helped to balance power between the participant and the researcher by opening the door for them to freely describe how they felt treated in the systems and their subsequent choices about how to define their lived experiences (as opposed to other people, particularly professionals, characterising their lives for them). This approach overall aligns with the guiding principles of Article 2 (non-discrimination) and Article 12 (participation rights) under the United Nations Convention on the Rights of the Child; the research participants had the choice of deciding how their ‘voices’ were heard, despite often growing up in socially marginalised circumstances.

It is also important to note that a brochure was used to further introduce the study (Appendix 1). The brochure served to point out the basic aspects of the study that aligned with the screening process questions.³³ The photograph on the back of the brochure lent credibility to the study as potential participants looked to match the researcher’s physical appearance in-person with her recent image on the brochure. Additionally, there was a short biography and contact information including a local phone number and university email address. It is also noteworthy that some young women who were approached in the food court declined an immediate interview, but provided contact information to schedule a meeting at a suitable time. Despite multiple follow-up attempts, however, only one interview materialised from this group.

³³ The brochure used to engage participants in the study offered potential participants a visual cue. This may have been seen as more approachable and easier to digest for some individuals.

5.5 Exploring the Life Stories of the Young African American Women (Data Collection)

Many interviews were conducted in private areas of the shopping mall's food hall where other shoppers were not near enough to hear the content. A quality Olympus audio-recorder was used and was placed near the participant on a flat surface, allowing the women to speak at a volume that would not be overheard. However, as the study progressed, some interviews were conducted at tables where the participants sat, in and around the food court. During these interviews, the audio-recorder was passed to the participant who would hold it up to record her voice. This approach worked well because the participants had control over the device and they could control the volume of their voice into it; at the same time, it was possible for them to speak in a low voice so the conversations were not overheard. It was discovered that this approach encouraged potential participants to take part and made them feel more relaxed; it was also more time effective and meant that the interviews were more spontaneous. It was noticed that these interviews were the most remarkable narratives in the study as their immediacy and spontaneity generally resulted in very natural accounts. In some, the young women talked continuously without interruption. All of the interviews were audio-recorded in this manner with the exception of one participant who preferred to have her life story recorded in writing. In this case, notes were taken in a manner which allowed her to see what was written.

It is also important to note that the choice of the shopping mall as the research site was significant because, as Elwood and Martin suggest, "interview locations situate a participant with respect to other actors" (Elwood and Martin 2000; 652-653). This is valuable given that the women's histories are "sparsely recorded" or "totally absent in other sources of historical information" with regard to the totality of their lived experiences in the child welfare and juvenile delinquent systems (Ibid.). The interviews allowed the young African American women to speak freely about their life stories in order to encourage an understanding about their experiences in the child welfare and juvenile delinquent systems. By exploring the complexities of their life narratives, the qualitative methods approach was designed to unpack the seldom studied lives of such young women through an in-depth interview process, which

challenged assumptions about their lived experiences. For the purpose of the study, it was thus essential to focus on the wide range of childhood and adolescent experiences of interacting with these systems, and to do so in sufficient detail so as to be able to recognise how they each brought their own unique perspectives. The reason for having multiple detailed accounts, then, was for the purpose of “comparing and contrasting these perspectives” where “researchers are able to notice the essential aspects” of the life stories as well as “recognize variations in how the experiences appear” (Polkinghorne, 2000; 140). In this way, there are both inductive and deductive methods to identify concepts, patterns and themes among the participants and also to recognise their exceptional life experiences.

A semi-structured interview schedule was developed before the interviews were initiated (Appendix 2). Open-ended questions were adopted to enable the young women to talk freely and, at the same time, allow flexibility in order to adapt the interview depending on the participant(s)’ desire to reveal further information. This approach also allowed the participants to speak in-depth about their background and experiences, which informed understanding about how they described their life experiences and involvement in the child welfare and juvenile delinquent systems. The form of interviewing also allowed for asking both open and focused follow-up questions, in order to gain more clarity about how they described their involvement with the systems and the interpretation and meaning they attributed to their lived experiences. The semi-structured interviews further allowed for flexibility and adjustment, which was particularly important given that the women did not always follow a strict chronological timeline when talking about their lives.

Whilst the basis for screening the potential participants rested on discerning whether they would share detailed narratives about their lived experiences, there was a need to gain the trust and interest of the young women from the outset. Initially, the ethics documents were reviewed with the potential participants (the information sheet, Appendix 3 and the consent form, Appendix 4) in order that they could make a choice about participating. The aim was also to describe the study in a manner whereby it did not place them at a disadvantage if an issue arose. It was emphasised that their participation was voluntary; the statements contained in the documents were contained in bold bullet points in the information sheet (Appendix 3) and

reviewed before the interview started. It was made clear that there was an obligation to report any issues surrounding unreported child abuse, neglect and/or illegal activities. The women were then asked to focus on their routes through the systems, their ability to participate when involved and their perspectives and opinions about how they felt treated. Participants were reassured that the information they shared would not be used to place them in an unfavourable position with potential exposure to formal authorities such as DHS or law enforcement. This approach became important when two potential participants stated that they thought the researcher was an investigator in the food court, as they perceived her as ‘scoping out’ the place and asking questions at many tables. However, this impression was dispelled when reviewing the detailed information sheet and consent form prior to the interview. The research participants came instead to understand the intent of the empirical research and the role of the researcher. The focus of the study on their past involvement with the child welfare and juvenile delinquent systems, rather than on their current daily lives, also conveyed that there was no intention to interfere with their present lives.

In order to learn from the young African American women about their life stories in the systems, precise information was needed about their interactions when entering, moving within and exiting them including, when possible, their ages and level of involvement at different periods. This type of information pertained to, for instance, the DHS report alleging abuse and/or neglect, the DHS investigation, removal from the home and/or placements in the child welfare system, the juvenile delinquent process from arrest, transport to the police station, case processing, the time period held at the precinct (and often in a holding cell), release to parent and ultimately, to court involvement (42 Pa.C.S.A § 6302, et seq). In order to establish their level of participation in decision making when involved in these systems, the information also pertained to the women’s interactions with individuals such as DHS social workers, foster care parents, police and probation officers, attorneys and/or judges.

The first segment of the interviews focused on the women’s backgrounds and families from birth onwards, in order to discover what contributed to their involvement in the systems, or whether indeed, they had been born into the child welfare system. In order to inform the research question about the overrepresentation

of young African American women in the child welfare and juvenile delinquent systems, the intention was also to learn about inter-generational involvement in the systems, and how the young women described their families and life experiences. Where possible, there was a desire to learn about their relationships with their parents and kin in order to understand their roles in the lives of the young women as they grew into adulthood and whether these relationships had a bearing on their entry, movement within and exit from the systems.

The interviews were critical because young African American women are the experts of their own lived experiences. It was important to hear first-hand narrations of how they interpreted and gave meaning to their interactions when involved in the systems, as opposed to ‘gatekeepers’ having an influence on how the stories were told. Some of the young women also felt that they had not had a chance to tell their stories and that the interviews offered the opportunity to describe in detail what happened to them and the changes they would like made to improve the systems.

5.6 Data Analysis

During the interview process, a number of interviews were transcribed in order that the data could be discussed in research supervision meetings. Ultimately, the audio-recordings of the interviews were reviewed twice. A Word document was created for each transcript in order to capture in full detail what the women said. The researcher sought to achieve verbatim transcripts. At some points, she had to play back audio-recorded sections multiple times in order to ensure accuracy. Although the researcher had many years of experience working with African Americans from deprived neighbourhoods, additional time was required to ensure the “linguistic differentiation” was represented in the interview transcripts (Labov, 2014; 17). Labov’s study, conducted in Philadelphia, focused on the dialect of African American Vernacular English (AAVE) versus white mainstream speech, noting that there are “abrupt discontinuities between Black and White” (Labov, 2014; 17-18). As the research participants for this study were generally from isolated urban neighbourhoods, their dialect was distinct. The researcher was careful to capture their grammar and syntax. It was important to capture the women’s authentic voices in the transcripts in order to respect and present the narrative in their own terms,

rather than imposing an unnatural speaking pattern which could be interpreted as reflecting a dominant power relationship between the researcher and the participants.

Each of the interview transcripts were manually coded, partly to account for linguistic issues where a uniform software program such as NVivo would not detect nuances and variances in language.³⁴ The highlighting function in Word was used for identifying sections of narrative information contained in each transcript which pertained to the core research questions. In analysing themes of overrepresentation and participation, the comments boxes in Word were also used to make notes about these highlighted sections. These comments were also printed for the purpose of cutting paper strips of narrative information and identifying categories that addressed the research questions. For the ‘messy boundaries’ data analysis chapter, Excel and Word charts were further created to organise information in order to trace in detail the routes taken by the young women and their interactions with the child welfare and juvenile delinquent systems. Each of the transcripts were also highlighted in Word for the purpose of categorising the nature of the women’s routes entering, moving within and exiting these systems and the basis for their involvement in them.

Using the descriptions in the transcripts, a separate summary was created for each research participant identifying specific categories needed to inform the theme of ‘messy boundaries.’ These categories included: (1) her route in the child welfare system, (2) her route in the juvenile delinquent system, (3) information related to ‘messy boundaries’ between the systems, (4) data related to the young woman and her perceptions (e.g., confusion about her involvement in these systems) and/or how those perceptions emerged and (5) instances which may be related to trauma or traumatic incidents and events in their lives. The Excel and Word charts were also compared with the written summaries in order to capture and refine the detailed narrative about their routes through these systems and the nature and basis for their involvement in them. Additional Word documents were created for narrative quotes by the women when categories repeatedly emerged pertaining to key subjects, such as their feelings of anger, aggression and fighting and systemic involvement

³⁴ NVivo is software designed for analysing qualitative and quantitative research data. It handles a wide range of data that is imported into its database and has query tools such as text searching to analyse data (<http://download.qsrinternational.com/Resource/NVivo10/NVivo-10-Overview.pdf>).

(especially ‘messy boundaries’). Their descriptions showed a wide range of lived experiences, viewpoints, opinions and recommendations about the participation of those involved in the systems. Writing out detailed accounts helped in the interpretation of data “through focusing on an individual in context,” as well as by identifying concepts, patterns and themes when reviewing the summaries in their entirety (Savin-Baden and Van Kiererk, 2007; 466).

For purpose of data analysis, NVivo was also used. All of the transcripts were imported into this software in order to create a database. Three nodes were created, representing each of the core research questions. A further node for data that appeared to be particularly interesting, ‘excellent quotes,’ was also created. Sub-nodes were created pertaining to the categories which emerged from reviewing the transcripts in order to further the identification of emerging themes for the data analysis chapters. The narrative information contained in the NVivo nodes and sub-nodes (and the text searching analysis tool) was selected in order to compare categories, including those contained in the manually coded data. Despite its advantages, this computer program had drawbacks as the sub-nodes did not necessarily pick up nuances and variations in language. The software capabilities also did not afford sufficiently robust text searching mechanisms to fully capture the lived experiences of the young African American women.

5.7 Ethical Considerations and Data Security

Each participant was provided with the University of Liverpool’s documents in compliance with the ethical standards set forth when approving ethics applications prior to conducting a study. There was a detailed information sheet about the study (Appendix 3), a consent form (Appendix 4) and a debriefing sheet for each of the participants (Appendix 5). These documents were reviewed at each of the interviews in order to ensure that the participants were informed about their rights and thus, could make knowledgeable decisions regarding participation in the study. The provisions contained in the information sheet and the checklist in the consent form were reviewed with each participant. The participants indicated to the researcher that they understood their rights and the research study. No participant in the study took part without their knowledge and direct, straightforward statements were made about

participation in order to ensure that women were not misled about the scope and nature of the research. Specifically, the participants were verbally informed and shown the provisions on the information sheet and on the consent form indicating that they could voluntarily withdraw at any time before, during or after an interview without explanation and/or affecting their rights. This right was emphasised in an underlined bullet point on the information sheet. Additionally, the information sheet explained that the research contained in the thesis would be confidential and anonymous, including no identifiable data about the women.

The participants were given the opportunity to ask questions before, during and/or after the interviews and the information sheet and consent form contained contact information to ensure they could reach the researcher after the interview if so desired. The participants had a direct local telephone number which was operational whilst the researcher was in Philadelphia and a long term, current email address. The thesis supervisors were also listed on the study materials along with their email addresses and contact information for the Research Governance Officer. All of the participants signed two copies of the consent form, one of which, along with the information sheet and debriefing materials, was provided for them to keep after the study. To date, none of the young women have reported any adverse effects, risks or hazards before, during or after the interviews. Some of the participants indicated how they liked the list of social service organisations on the back of the debriefing sheet. They mentioned recognising some of the organisations and appreciated having all of the contact information in one place. If using this type of debriefing sheet again, the researcher would expand the list to include a wider range of organisations providing services, as the young women seemed to regard the list as a document they would keep for easy reference.

The consent forms containing participant identification and contact information have been locked securely in a filing cabinet (Philadelphia) and a locked receptacle in a secured residence/office (Liverpool). Research participants were directed not to state their names or any contact information on the audio recordings. The audio files and interview transcripts were uploaded to the University of Liverpool secure m: drive. Thereafter an anonymized set of transcripts was generated with all personal details removed in order to prepare the data for tasks such as manually coding using Word

documents, uploading to NVivo and making a hard copy of them in order to analyse the data.

5.8 Study Limitations

The impact that racial stereotypes may have had on the study is perhaps one limitation worthy of consideration given that the researcher was a middle-class Caucasian woman and the participants were young African American women, primarily from deprived urban neighbourhoods in Philadelphia. In the United States, “race remains a very difficult topic to talk about explicitly” and there is a “well-developed code for implicitly discussing race both within and across groups” including influencing “the rapport necessary to facilitate open and explicit discussion about race” (Buford May, 2014; 133). There is a salient study that compares the engagement, recruitment and interviewing processes of an African American researcher and a Caucasian researcher (Gibson and Abrams, 2007). It was found that ‘race’ did impact on their ability to access participants for interviews and establish relationships among participants during those interviews, despite the fact that the researchers were from the same ‘profession’ and ‘social class’ (Gibson and Abrams, 2007; 459). This study discussed how an African American researcher had positive experiences when accessing and engaging a group of black participants for a study (for example, ‘immediate positive reception,’ was assumed to be an ‘ally,’ ‘interconnectedness’), whereas a Caucasian researcher experienced ‘challenges’ and ‘needed assistance’ in order to accomplish a similar outcome (Gibson and Abrams, 2007; 472).

In this study, the white researcher described having to ‘sell’ the study to potential participants in order to prove her ‘ally status’ and felt she “met with suspicion about personal gain” including experiencing feelings of “distrust and shut-down” by the participants she interviewed (Ibid.; 472). On the other hand, she also conveyed the benefit of participants giving “lengthy explanations of world view” due to their associating her race with a ‘lack of knowledge’ about them (Ibid.; 472). A sense of distrust and suspicion from a few research participants, as detailed above, was also experienced during this study. However, it made a difference to have clarified the motives for hearing the women’s stories and to be providing remuneration for their

time—thus, demonstrating that the women were being taken seriously and respected for the sharing of their life stories and viewpoints about the systems.

At the same time, it is important to acknowledge and reflect on “how power and privilege shape social sciences research” including an analysis of the “the context of discovery” and “an identification of the researcher’s positionality” (McCorkel and Meyers, 2003; 205). In considering ‘positionality,’ it has now been shown by these and other researchers that “[r]ecent research has attempted to move beyond a strict outsider/insider dichotomy to emphasize the relative nature of the researcher’s identity and social position, depending on the specific research context” (Kersetter, 2012; 100). What is referred to by one academic researcher as the ‘space between’ the researcher and participant is usually characterized as a ‘multidimensional’ space, wherein “researchers’ identities, cultural backgrounds, and relationship to research participants influence how they are positioned” (Kersetter, 2012; 101). Further, it is noted that the research process is not static, and the researcher and participant can “move in and out of similarity.” They are “likely to oscillate between these positions” as insiders and outsiders (Tinker and Armstrong, 2008; 54). Although the process may consider the role of race, participants may actually experience multiple oppressions—but is unclear how different types of oppression can vacillate during the research process as they do not necessarily intersect at the same point (McCorkel and Meyers, 2003; 201).

Throughout the research process, consideration was given as to how the researcher’s Caucasian middle-class background might influence the nature of the interviews with young African American women from deprived neighbourhoods, particularly with regard to the researcher’s standpoint and whether her life history, experiences and broad ranging relationships with African Americans from diverse backgrounds may have been influential. From 1969 to 1981, she attended integrated schools in Berkeley, California, although generally residential neighbourhoods and some school modules were composed of nearly all white people. From 1991 to 1993, she also worked in Baltimore, Maryland as a legal aid attorney, predominately representing African American women and men from highly deprived urban neighbourhoods, who were living with HIV and AIDS. During this time, she served more than 250 clients, 72 of whom died from AIDS. In 2003, she was a volunteer at the

Pennsylvania Prison Society for one year and met with mostly African American men who were serving life sentences at a state correctional facility. These men acted as experts to develop the content for a restorative justice manual, which she drafted. She also worked with many middle-class African American attorneys in the Child Welfare Unit for the City of Philadelphia Law Department. The clients here were mostly African American women social workers; they had undergraduate degrees; their supervisors had Masters Degrees in Social Work (MSW) as required for their employment. At times during the interviews, there was a feeling of being an 'informed outsider,' as the researcher's years of work in these systems helped to overcome challenges, enabling her to speak confidently about her experiences and to interact naturally in a manner that grew out of everyday experiences working in this field (Tinker and Armstrong, 2008; 51). Whilst 'race difference could have been a barrier to participation,' it was perhaps offset by the desire to hear their individual life experiences and so avoid 'racial' stereotyping about children and young people involved in these systems—'bad kids' (McCorkel and Meyers, 2003; 207, 211; Best, 2003; 905). It was noteworthy that the level of sharing sometimes deepened considerably when participants recognised the researcher's interest in their life narratives and sensed her regard for them as important human beings, central to the understanding of how the child welfare and juvenile delinquent systems work.

There were benefits from many years working with African Americans from deprived neighbourhoods whose phonology is different from that of a white middle-class woman from the West Coast of the United States (Berkeley, California). The researcher did not have to ask frequently for participants to restate sentences or parts of their stories, although there were follow-up questions at times to clarify a narrative. Potentially, some of the participants may also have been more comfortable discussing their life narratives as the interest was strictly in their lived experiences in the systems, and not on current aspects of their lives. Accordingly, the study was not regarded by the participants as wanting to 'get into their business' (Tinker and Armstrong, 2008; 112; Best, 2003; 211). The participants may also have registered a sense of remoteness, given the researcher's 'distance' from their personal lives (Ibid.). Tinker and Armstrong regarded this distance as 'benefit[s]' for outsiders uninformed about their participants (Ibid; 58). For instance, many participants gave highly detailed accounts about their lives in these systems and welcomed the

opportunity to give their own view about how they were treated, their ability to participate and the changes they would recommend (Ibid.; 58).

On the other hand, there were challenges as an ‘outsider.’ It was particularly important to establish trust and dispel any concerns the participants may have had, including fears about not being treated with respect and fairness in the study. During the interview process some participants struggled to tell their stories and the interviews required focused questions in order to learn about their lives and connections to the child welfare and juvenile delinquent systems. In a few instances, it may potentially have been easier to engage participants as an ‘insider’ as they would have possibly felt part of a similar group with shared values, belief systems and experiences resulting from the historical legacy of slavery and the invidious racial discrimination which continues to be prevalent in America (Tillman, 2002; 4). For half of her interview, one participant persisted in calling the researcher, ‘maam,’ despite having been assured that first names were appropriate. The use of the term ‘maam’ by this participant was an example of how, at least initially, the perception of the researcher as an ‘outsider’ may have affected at least the flow of the conversation. At times with some of the women, it also seemed as though there was a level of distrust, fear or suspicion.

Generally, these interviews had the potential to yield information about generational involvement in the systems, for instance, if the women disclosed about a parent or their own children’s involvement in the child welfare and/or juvenile delinquent systems. In the same way, the interviews could provide important details about women’s routes through the systems. The reality was, however, that the women’s answers were sometimes stunted and the interviews did not always produce as much useful information as the researcher would have liked outside of detailed accounts about their routes in the systems.

The most difficult interview in terms of obtaining narrative material was perhaps with the eighth research participant. She did not want to talk about her family background or schooling and additional questions were not pursued when she asked not to share. To learn about this participant’s involvement in the juvenile delinquent system then, focused questions were employed about specific steps in this system’s

processes. However, when asked a question as to whether the public defender enquired about her side of the story, the participant opened and expanded on her response. It was evident that the participant felt able to share more freely once she realised it was her side to the story or lived experience that interested the interviewer; how *she* perceived her circumstances and felt treated in the child welfare and juvenile delinquent systems.

It is understandable, given dominant social norms for white and black middle-class respectability in American culture, that there may have been trust issues whereby some women perceived the researcher as being against them (Jones, 2009). This recognition was significant because when a young woman was reluctant to share, beyond giving facts about her past involvement in these systems, it was helpful to emphasise that the study focused on her life story and viewpoints, and thus opening the door for more fluid and detailed life narratives. Some of these women went on to identify issues of fairness and their treatment in the child welfare and juvenile delinquent systems, which they then freely described during the interviews. When asked about the nature of these issues, the participants would share key elements of their life stories, illustrating why they perceived the system to be against them.

At the same time, there are questions about whether ‘mutuality’ is ever developed in the interviews without knowing about their families, how they fit into the entire picture of their ‘social world’ and their comments about the establishment (McCorkel and Meyer, 2008; 201, 221). Whilst ‘race matching’ of researcher and participant as African American may facilitate an immediate sense of connectedness when conducting a study, interviewing is also a “personal exchange of give and take, both researcher and subject can control and resist the ebb and flow of conversation” (Buford May, 2014; 117, 133). Despite serious challenges, “there can be substantive discussion that allows individuals to transcend boundaries and express deeply rooted feelings and emotions,” irrespective of a researcher’s unfamiliarity with their life stories (Buford May, 2014; 133). In this study, this was indeed the case, as the participants felt empowered, respected and validated at being asked to share their experiences, perspectives and opinions.

5.9 Conclusion

For the purpose of the empirical research, it was considered that narrative inquiry would offer deeper understanding about the lived experiences of young African American women in the child welfare and juvenile delinquent systems in Philadelphia. In particular this approach helped address the core research questions regarding their overrepresentation in these systems, the nature of their routes through the systems and their level of participation when involved. Through telling their life stories, the young women described these systems and attributed their own understandings, thoughts, feelings, viewpoints and opinions about them. Their narratives, as captured in the interviews, did not reflect numerical or statistical evaluation defining and interpreting their lived experiences and the details of their lives. The young women, through sharing their life narratives with the interviewer, may have felt that they contributed to the research process and were potentially impacting the systemic structures that so heavily affected their lives. The women who were interviewed were often socially marginalised and excluded from the realm of knowledge about children and young people in the child welfare and juvenile delinquent systems. Prior to the interviews, they had little idea of how their experiences might inform law and public policy.

In the next chapters, the life narratives of the participants are explored in order to discuss the principal research questions. The narrative approach of the interviews offers an opportunity to understand the detailed complexities of the young African American women's lives. The nuances and subtleties of their lived experiences are then analysed to identify concepts, patterns and themes that capture their childhoods and teenage years in Philadelphia's child welfare and juvenile delinquent systems. This approach allows the researcher to learn in detail from the participants' varied life experiences and how those experiences impact on the analysis.

CHAPTER 6:

It's Still Going On—Why? Reasons Why Overrepresentation of Young African American Girls and Young Women Persists

This chapter offers an in-depth examination of the empirical research and the range of factors that resulted in the young African American women becoming exposed to and involved in the child welfare and juvenile delinquent systems in Philadelphia. There is an exploration of how the legacy of slavery and recycled ideologies may help to explain the findings of the data outlined in this chapter. This data reflects child welfare and juvenile delinquent systems in Philadelphia in which a high percentage of court-involved children and young people are African American. Whilst there are no specific statistics detailing the African American presence in the child welfare system in Philadelphia, there are comparable statistics for the child welfare systems in Chicago and New York (Roberts, D. (n.d.); www.pbs.org). In Chicago, “95 percent of the children in foster care are black” and “black children in New York were 10 times as likely as white children to be in state protective custody” (Ibid.). In 2006, 82% of alleged serious offenses in Philadelphia involved black youth offenders compared to 17% involving white offenders (Urban League, *The State of Black Philadelphia*, 2007; 40). For less serious offenses, ‘77%’ of alleged offenders were black and ‘23%’ white (Ibid.). It should be noted here that each of the young African American women involved in the empirical research had court-involvement in the child welfare and juvenile delinquent systems.

In Philadelphia, there are nearly 20,000 children and young people involved with the child welfare system (Department of Human Services website, homepage).³⁵ According to the American Community Survey released by the United States’ Census Bureau in 2012, African American families with children under 18 years old and headed by a ‘single mother’ have the highest rate of poverty at 47.5% (Blackdemographics.com). This compares to only 8.4% for black families headed by a married couple (Shared Prosperity Philadelphia, Mayor’s Office on Community

³⁵ The Department of Human Services for the City of Philadelphia sets forth this statistic on its homepage as follows: http://dhs.phila.gov/intranet/pgintrahome_pub.nsf/content/cydhompage

Empowerment and Opportunity). The official federal poverty threshold is \$21,756 annually for families with two adults and two children (USCensus.gov, 2009). 28% of Philadelphians, (between 430,000 and 440,000) live below the federal poverty line, including 39% of the city's children (Shaw, *Philly.com*; 2011). Philadelphia's deep-poverty rate is 12.2%, or nearly 185,000 people, including about 60,000 children; this rate is nearly half of the deep poverty rate (6.3%) in the United States (Lubrano, *Philly.com*, 2014). According to the 2010 American Community Survey, African Americans made up about 42% of Philadelphia's 1.5 million people; the survey also showed that about 31% of the black population was living in poverty compared with 29% in 2000 (Shas, *Philly.com*, 2011). Deep poverty refers to incomes of approximately half the federal poverty line (Lubrano, *Philly.com*, 2014). Much of the north and lower northeast Philadelphia neighbourhoods fall below the poverty line (Pew Charitable Trust Report, 2014; 8).

This chapter considers factors associated with poverty alongside the empirical research in order to discern whether it has a role in contributing to the young women's involvement and overrepresentation in the child welfare and juvenile delinquent systems, as well as their level of participation in contributing to decision making when involved. The chapter considers whether their presence in the systems is related to the legacy of slavery, recycled ideology and intergenerational trauma and whether the extent of involvement is exacerbated by experiences whilst in the systems themselves. In order to explore these themes, this chapter discusses how the women engaged with and were treated by representatives of the institutions associated with the systems and whether their experiences in this regard contributed to their overrepresentation in those systems. The empirical research is examined to assess whether any disadvantages were reinforced and/or perpetuated when individuals associated with institutions did not acknowledge, address and/or accommodate the women's needs and moreover, overrepresentation in and length of engagement with the systems.

In addition, this chapter considers the notion of the 'middle class' for purposes of understanding the young African American women and how their lived experiences can differ from those of more advantaged individuals in USA society. The term 'middle class' can be contentious and the definition used here is that given by the

Pew Research Center of the Pew Charitable Trust. This definition arose from extensive research amongst the ‘middle class’ in Philadelphia. In 2014, the Center issued a report stating that “membership of the middle class is often based on adherence to a set of values and aspirations, or possession of a combination of social characteristics including occupational status and educational attainment (The Pew Charitable Trust Charitable Report. Primarily, though, class definitions are based on money” (The Pew Charitable Trust Report, 1; 2014). The report further refers to statistical data from the United States’ Census Bureau and other sources where they considered adult Philadelphians to be middle class if they lived in households that had incomes ranging from 67% to 200% of the median household income for the entire Philadelphia metropolitan region (Ibid.). In 2010, with the regional median household income at \$61,579, that meant incomes from \$41,258 to \$123,157 fell into the middle class category (Ibid.). People below that range were considered lower class; those above the range were considered upper class (Ibid.).

Thus, the study showed that it is difficult to link racism to the child welfare and juvenile delinquent systems in Philadelphia since a high percentage of the court-involved children and young people are African American. Perhaps given the high level of poverty among African Americans in Philadelphia and the participants of the study who experienced poverty, there may be a connection, but this study is too limited to be able to draw such a conclusion without oversimplification or generalisation; it would be irresponsible to make this connection without further empirical research exploring the young women’s history by generations and ancestry in order to draw discrete insights about the prevalence of historical racism. At the same time, the girls and young women could shed light on how participating in decision making (or not) could: (1) illustrate the role of poverty in their lives and (2) inform reducing their overrepresentation as minorities with disproportionate contact in the child welfare and juvenile delinquent systems.

6.1 Biological Mothers

The empirical research showed that in general, the young African American women were initially exposed to the child welfare system through their relationships with their biological mother. There were two instances when the young women were

taken into child protective custody at birth by the Department of Human Services (DHS). One participant had a biological mother with a prior connection to DHS, and the participant was immediately removed from her mother's care at the hospital when she was born (RP 3). Although the participant knew the identity of her mother, she chose not to have contact with her. She indicated that her mother had 14 children. Another participant believed that her mother abandoned her at the hospital when she was born or did not want to bring her home. Her cousin and grandmother brought her home from the hospital and she then became involved with DHS as hospital personnel are mandatory reporters for DHS (RP 28). There was no additional information provided by the participants indicating that their mothers sought to care for them at that time or a later date, and it appeared that child protective services fulfilled their role in providing for the needs and safety of these two participants. Despite such problems, any legal mechanisms designed to regulate reproduction for mothers unable to care for their children at birth would hark back to historical eugenics where the early reformers used sanitized, clinical approaches, enforced by miscegenation laws to socially control the breeding of African Americans. It is clear there were no such interventions these instances.

6.2 Biological Mothers and Meeting Basic Needs

Whilst the 'middle class' in Philadelphia are generally able to meet basic needs including daily meals, utilities and Internet, clothes, vehicle(s) and possibly the option to purchase a home, there were young African Americans who participated in the study that generally did not have sufficient resources when they were growing up. Consequently, they encountered additional problems as each unmet need led to additional issues and problems which affected their lives. Whilst there may be a stereotype about the 'welfare queen,' in actual fact these families are living at or below the poverty line whereby each day takes effort to ensure children have their basic needs met and are kept safe. It is therefore stated that poor families often have:

severe economic shortages... many [have] more worries about basic issues: how to endure food shortages, get children to doctors despite a lack of

reliable transportation, purchase clothing, and manage other life necessities³⁶ (Lareau, 2003; 249, 252).

The empirical research further showed that when the young women's mothers were unable to meet their children's basic needs due to substance misuse such as alcohol and/or illicit drugs, DHS generally became involved, and implemented in-home services or removed the children from the home. Many participants lived in poverty with a single biological mother. The meagre incomes meant the mothers did not have the resources to provide responsible supervision for their children if they were absent. Thus, government institutions became involved, including the child welfare and juvenile delinquent systems. Sometimes there were 'absences' due to substance misuse. The participants' interviews highlighted a number of biological mothers who were struggling in this way (RP 7, RP 10, RP 11, RP 12, RP 15, RP 16, RP 17, RP 18, RP 23, RP 24, RP 26, RP 27, RP 28). From the outset, however, the DHS social workers, attorneys and other professionals could encourage the girls and young women to participate in order to bridge their separation from family members with consistent, ongoing visitation which can be enforced with written court orders.

Further, there was one instance when the DHS intervened with in-home services where the children did not have their basic needs met; the participant indicated that the social worker ensured they had food and eventually they received new public housing without removal from the home (RP 12). She stated, "[...] when you come from a poor family and they drink all the time, yeah, it was really hard." She also described how she and her siblings fended for themselves, saying "mostly, we had [to] learn to do them things on our own anyway." She remembers, "eatin' liver, rice," cooking at times on a hot plate and getting thrown out of the grocery store for opening cans in aisle and eating out of them—"we were hungry and that's tellin' the truth." There were also electric wires running from her house to the house next door to keep their lights on, "cuz we didn't have no electric" and they washed their clothes in the bath tub. She believed the juvenile delinquent court judge ordered a child advocate to take the children (including herself and her brother) on outings so they would stop stealing food at the nearby grocery store. These outings can

³⁶ There is not a child allowance like Sweden and other Western European countries and there are many more poor children in the United States than the other countries (Lareau, 2003; 249, 252)

encourage children to participate regardless of age with a DHS social worker or child advocate and potentially discourage offending, particularly in discussing their basic needs and safety whilst having a meal together.

It was the lack of basic needs that ultimately brought this family to the attention of the child welfare and juvenile delinquent systems. Their mother's alcoholism meant that the amount of income spent on alcohol was a greater percentage of their income than would have been the case for a 'middle class' woman with additional resources. A biological mother with resources may be better able to manage as a functional addict; she may have disposable income to legally afford an addiction, using alcohol, medicinal or recreational marijuana (permitted in some USA states) and/or prescriptions from a private physician. At the same time, she may be able to maintain her life by arranging for a caregiver to look after the children if she cannot competently provide adequate supervision when she is using alcohol and/or drugs or suffering from the effects of substance misuse. It is also noteworthy that 'middle class' parents are "more likely to have informal access to valuable information and advice, professionals and experts" whereby they can discretely seek help for substance misuse (Lareau, 2003; 171). In this way, those who have the financial means and social connections/networks are able to seek medical and other related assistance, maintain their privacy, preserve their social status and prevent or limit exposure to the child welfare system and other government systems. For the young women who participated in the study, on the other hand, the absence of a responsible, nurturing caregiver can mean a cascade of problems wherein the family becomes involved with DHS.

In the interviews, several women spoke of their mothers having had to obtain their substances on the street, as opposed to a physician's office or hospital (RP 10, 11, 15, 16, 17, 18, 23, 24, 26, 29). As a result of having to purchase their substances on the street, these single mothers became exposed to observation, surveillance and scrutiny by law enforcement and in some cases, the adult criminal justice system and the prison systems.³⁷ In these instances, the mother's situation as a single mother,

³⁷ It should be noted that Professor Michelle Alexander in *The New Jim Crow* and Assistant Professor Alice Goffman in *On The Run* have discussed a high level of observation, surveillance and scrutiny

living in poverty and lacking access to prescription medication from a private physician, resulted in periods of absence from her children's lives and in turn, their being exposed to involvement in the child welfare system. One participant lived with different people, mainly cousins (RP 15). Her mother didn't have a house for long, a couple of years before she started "ditching us" [her children]—"she got like off the wall into drug habit" and was locked-up. Another mother got "caught up in a life of doing drugs and running the street" and died in prison when her daughter was 14 years old (RP 23). One participant disclosed that that they put a bench warrant out for her mother's arrest because "her pee came back positive for drugs" (she also stated that her mother "did a lot of stupid stuff, like she would sell all our stuff out of our house so she could get money for drugs") (RP 18).

Consequently due to their absence from home and the lack of another caregiver to supervise the children, their children became involved in the child welfare system. The 'absences' causing concern can include seeking substances and leaving the children without supervision, not having stable housing and becoming homeless, having a bench warrant for arrest against you, being arrested, being processed through the criminal justice system, incarceration for offenses related to substance misuse and even death. These types of circumstances can contribute to the overrepresentation of the young women in the child welfare and juvenile delinquent systems, although it would again be irresponsible to link these circumstances to a historical context without further empirical research, particularly considering how one member of a family may struggle with addiction but other family members are able to serve as nurturing, loving caregivers in these situations for the children (as will be discussed later in this chapter). Nevertheless the DHS social worker, attorneys or judge can meet with the girls and young women to encourage and understand their daily routines and have them contribute to decision making about arranging visits as well as identifying suitable out-of-home placements with potentially a nearby adult family member or close friend where they have an established relationship in their own neighbourhoods, schools and communities.

by law enforcement, although in the context of African American men and not African American girls and young women involved in the child welfare and juvenile delinquent systems.

In addition, one participant described her mother spiralling into drug addiction and a situation “where I was taking care of the children...I was basically their mother before DHS stepped in” (RP 26). As a child herself, she was carrying the responsibilities of a single parent with four children and attempting to supervise her three siblings and meet their basic needs. The participant’s mother did work but became addicted to pain medication when using prescription drugs for a chronic medical condition. However, once her addiction intensified, the participant indicated she had to deal with outside people to get the drugs. The participant stated, “they [the drugs] cost a lot of money, like especially off the streets and my mother was getting immune, she had to take more” (RP 26). Her “immunity” meant her mother’s tolerance to certain medication was increasing and thus, she needed additional drugs in order to get the same high. Whilst her mother exposed herself to the possibility of arrest and alleged criminal offenses arising from the need to buy prescription medication off the street, the participant also indicated that her slightly younger brother was “running the streets.” His activities made him vulnerable to violating curfew laws and possibly committing other offenses which could, in turn, have exposed him to involvement with the child welfare and juvenile delinquent systems. This participant also missed a lot of high school, attempted to hold down an afterschool job (which depended on good school attendance), was taking care of a baby (“like a real baby”) who had to be weaned off morphine when she was born due to her mother’s addiction. She also looked after “two other little ones.” She stated:

I couldn’t, sometimes I had to feed them and not eat myself until my mom would finally come back after 2 or 3 days and give us money to eat if she had money or she bring in food, one of her friends bring the food or something (RP 26).

In this instance, DHS intervened because the biological mother’s prescription drug addiction led to her sacrificing her employment which had supported the family’s basic needs, therefore reducing her ability to parent her children. Whilst this family was not living in poverty before the mother’s addiction, her status as a single mother meant that DHS intervened to address the children’s needs and safety as another caregiver had not stepped in and they did not have sufficient resources for survival. In this circumstance, the mother’s addiction had also created a situation where her daughter’s absences from school were significantly affecting her education and she

also became vulnerable to engagement with the truancy court (although it did not happen). In this situation, even a slightly deficient income had considerable effect on this family and they slid into poverty as their mother became unable to work and thereafter was absent at times from the home.

Where there is not a competent caregiver present to focus on the well-being, growth and development of the African American girl or young woman, the consequence is that she adapts to her environment, focusing on survival, meeting her and/or her siblings' basic needs and keeping them safe. Whilst socio-economic status does not necessarily determine whether children will experience child abuse and/or neglect as a result of a parent's addiction (all children may be traumatised), the difference for a 'middle-class' family is that there is less chance of the children trying to fend for themselves and thus, being exposed to child welfare and juvenile delinquent systems. African American single mothers with an active addiction and inadequate resources to cover necessities, including hiring substitute caregivers, increase the potential for their children's involvement with these public institutions. If they are vulnerable to arrest, prosecution and incarceration for any offenses related to illicit substance misuse, they run the risk of increasing the length of time that involvement continues until discharge. In this instance (as will be discussed later in the chapter), the grandmother was able to act as a kinship caregiver and thus, the participant and her siblings were able to remain together with family once DHS intervened. Remaining with their grandmother stabilized their precarious existence by having a close relative care for them and it meant they were not as likely to experience additional trauma due to removal from the family, placement in foster care and separated from their family and friends whilst living with strangers.

6.3 Biological Fathers

African American men are much more likely to be incarcerated during their lives than any other group of men, and the consequences of felony convictions increased the likelihood of exclusion from economic opportunity (due to, for instance, requiring reporting of criminal convictions on a job application or disclosing criminal background as a condition of employment over a specified period of time) and public life (unable to vote due to conviction) (Goffman, 2014; Alexander, 2010).

Only one participant indicated that she grew up with her biological father who had his own small business and worked regularly; she lived with him and her paternal grandmother (RP 16). A young woman talked about the absence of a father and the intense feelings of abandonment and upset she experienced (RP 6). She described the grave disappointment of not having a biological father in her life and the yearning she had for a father with a strong emotional presence:

[...] you weren't there for me, you're still not there for me now how I need you to be there. He would just say 'what the fuck can I do?' There is something you can do [...] I feel completely ready to [put] my trust in you so we could have a father-daughter relationship and, he would do it for the first day or the first week, then he would just... like, wouldn't care anymore, it was like he would come around, 'we gonna make this work,' and then disappear (RP 6).

In instances such as this, not only are young women without a biological father to take care of and supervise their upbringing, but some of the participants were also traumatised by the devastating circumstances in their fathers' lives or death; circumstances which were usually related to living in poverty. Without two parents available to provide adequate supervision for their children, there is an increased likelihood of involvement in the child welfare and/or other systems, especially if a mother becomes unable to care for them and does not have backup from a relative or friend. As there is such a high proportion of single-mother led families amongst some of the African American community, this is a contributory factor to their overrepresentation in these systems.

Several participants revealed that their fathers or step-fathers had had spells in prison or lived on death row and were consequently absent from their daily lives for significant periods and unable to act as a caregiver. One father was "locked up" for 5-6 years (RP 5). RP 15 stated her father was locked up a few times. RP 25 stated that her father was "in and out of jail" and using drugs. One participant reported that her father had been incarcerated for her whole life (RP 31). Another participant indicated that she chose to maintain an active relationship with her step-father despite his incarceration on death row (RP 6). He was convicted for murder. This participant continued to regard her step-father with humanity out of respect for his role in her life before he was incarcerated. He had been a strong presence in her life;

she wanted this relationship to continue and him to meet her daughter who she was adding to the official prison visiting list. Her relationship with him meant that her desire to maintain a sense of family for him, herself and her daughter outweighed any concerns she had about shielding her daughter from the prison environment and the knowledge that her step-grandfather would be incarcerated for life and potentially executed.

At her daughter's age, she was old enough to form a distinct impression about the prison visits, which as they were to a death row inmate, would likely be conducted in a highly secured environment. She would experience, or at least observe, lines to enter the prison visiting areas, passing through metal detectors, entry searches for contraband, the confined visiting area patrolled by security guards, the inmates entering in similar prison attire, the talking over a table for a limited period of time without human contact such as touching hands and the all at once departures from the visiting room. It is inevitable that routinely having these experiences will make a strong impression on a young woman as she grows up with the reality that many African American men in her neighbourhood spend time in prison, sometimes even serving life sentences without parole or being sentenced to death row. It is possible that the frequently occurring absences of fathers and step-fathers from daily family life, and from the neighbourhoods, could be perceived by young women as an indication of how the prison system and lack of opportunities serve as social control as described in the literature (Alexander, 2010). In this instance, however, the participant described her lived experiences from a humanistic perspective focusing on her thoughts and feelings towards her step-father and her connection to him, rather than criticising his incarceration.

Another participant, when asked whether she maintained a relationship with her father, said "no." He was incarcerated for life and she did not know him; she described at first having written letters in the hope of making a human connection with him (RP 31). However, after her efforts at communication failed to achieve this, she decided not to pursue it. Unlike RP 6, who cared about her relationship with her step-father and regarded him as a human being who had treated her with kindness and warmth before going to prison, this participant did not have a memory of her father having a presence in her life. She did not indicate having sought to know her

father in order to learn about her roots and appeared to have let go of any need to know about him.

There was not a distinct correlation as to how the lived experiences and emotional lives of the young women with fathers and/or step-fathers who were incarcerated led to their own presence in the child welfare and/or juvenile delinquent systems, except that they were absent and unable to serve as providers and caregivers. However, three participants indicated how their fathers died prematurely and how such trauma affected their lives. In these instances, the trauma experienced as a result of the father's death had miserable consequences for their lives, eventually leading to involvement in the child welfare and/or juvenile delinquent systems. One participant's father died when she was 7 (RP 7). Her father died from a terminal illness; he had provided for his family. This participant stated, "Everything was good with him, everything was different, we didn't want for nothing. I knew who my dad was." When her father died, the participant's mother "fell off" and thus, the children became vulnerable to DHS intervention as a result of her profound grief, inability to cope and lack of financial resources to provide for the family.

The circumstances became analogous to those of the single mothers suffering from addictions, and in a similar way her life cascaded downward until DHS had to intervene. She described her mother as "drinking, like emotional... whenever she get money." Her mother stopped going to her housekeeping job and they "had to live with somebody, a whole bunch of household people." Thereafter her school made a DHS report because "we wasn't like, fully dressed." Should such traumatic loss occur in a 'middle class' family, the family may have the advantage of there being sufficient resources to maintain the home, cover basic needs and therefore prevent the children from becoming vulnerable to DHS intervention in their lives. Whilst a child in this situation would still feel the loss of the father and suffer because of the mother's inability to cope, the trauma would not be compounded by losing the family home and being propelled into an unfamiliar living situation with people she might not know. In the case of RP 7, however, such changes had clear and extremely detrimental effect. She described the instability of living in a household which was not her home and which included many other people. With her mother lacking the capacity to take care of her and her siblings, it is unsurprising that she describes

having felt 'overwhelmed' and as if she had no "sense of control, connection, and meaning" in her life (Herman, 1992; 33).

These circumstances may have added to her trauma as they destroyed her "fundamental assumptions about the safety of the world" when trying to survive without having her basic needs met and the emotional security of her father's presence and reassurance in her life, in addition to providing financially for the family (Herman, 1992; 51). Intervention from DHS meant that at about 7 years of age, she was abruptly removed from home and her mother. Whilst she was traumatised and devastated by the absence of her mother in her life, it cannot be observed from her lived experiences whether the family circumstances were a result of racism. In the case of RP 7, following removal from her mother, she was predominantly raised by her aunt, only returning to her mother at 14-15 years of age. At this stage, the return was destabilising, especially given a lack of household rules; and she thereafter dropped out of school and eventually became deeply involved in the juvenile delinquent system. What can be observed, therefore, is that many African Americans in Philadelphia live in poverty and that DHS serves as a last resort to ensure children's survival when their lives collapse following death and catastrophe. At the same time, it is apparent how systemic responses failed to account for the girls' and young women's relationships and living situations and instead, relied using administrative mechanisms to address the child without garnering her views and participation as part of the decision making process.

Another participant experienced her father's death at 11 years of age. She described having found his body on one of her regular weekend visits to his home:

... I just came in with my key and stuff and when I got in there he was... the bathroom was stinking and all these flies and everything, and all you could see was his handprints sliding down the thing. He had overdosed (RP 12).

She went on to describe the smell, how the police had been called and how her father had been identified by his teeth (RP 12). The great trauma of this event caused her significant emotional damage and she began meeting with a psychiatrist twice a week. Unfortunately the mental health intervention was not effective at alleviating her intense distress and pain, and at about age 12 or 13, she took her mother's pills

and attempted suicide. She had written a note and was found “asleep” (unconscious) and taken to hospital. From her description, it appears that she experienced multiple traumas in her life, including not having basic needs met (also leading to stealing for food) and living with her mother’s alcoholism. She also suffered harassment from boys at school and described how they would talk about her breasts and bottom, and frequently try to feel her and do their ‘learning’ on her. This harassment made it difficult to learn as it was distressing and distracting. When caught usually fighting them off by a teacher, she and sometimes the boys would be sent to the principal’s office, but she described that the harassment did not stop (although her fighting did not result in arrest and case processing in the juvenile delinquent system, as it did for other young women).

Although multiple systems were involved, intervention was haphazard and ineffective in addressing the bleakness of her life. Her attempted suicide at a young age may be understood to result from the cumulative effects of so many ‘traumatic events’ and exposure to ‘chronic, prolonged trauma’ (Herman, 1992). It is noteworthy that the ‘messiness’ in her life was not addressed with a systemic response, implementing the range of interventions and services needed to help her cope. She described the psychiatrist asking her a lot of questions, but she could not recall discussing her mother’s drinking. It is possible that in the mental health setting, her psychiatrist may not have encouraged her to explore a range of difficulties to ease or alleviate problems in her life.

6.4 Kin as Caregivers

Whilst some of the African American women experienced the trauma of not having a biological mother or father present (in several cases due to addiction and/or incarceration), the empirical data did show that when a biological mother or father was not able to parent, or lacked the resources necessary to support their parenting as a result of addiction, incarceration or other issues, an alternative primary caregiver was at times able to act as a mother or father figure, providing stability, predictability, nurturing and love to some of the young women as they grew up. In some cases their caregiving was possible despite their lives on a low income. In these cases they may have received kinship care payments from the child welfare

system to financially support raising children. One participant described how alternate caregivers could be there for them:

Everybody is all so ‘I don’t have a dad, I don’t have a father.’ Okay, you had a mother, you had one, right? Okay, take that and run with it. You had one parent that was there for you, instead of two parents in the household... Did you have a grandmother? Did you have a grandfather? Okay, look at your grandfather as a father figure to you (RP 3).

There were African American girls and young women who were able to transcend the issues of not having a biological parent to raise them; several women described having nurturing relationships with caregivers who stepped into the role as a mother figure. These young women were able to bond with them and continued to develop the relationship throughout their childhood; this included cases where they had kinship care through the child welfare system. For instance, one participant regarded her aunt as her “mother” (RP 3). When she saw her biological mother on a chance occasion, she considered her only as the woman who had given birth to her (RP 3). Another participant stated, “my aunt had took me in, she raised me, fed me and everything” (RP 11). A third participant referred to her aunt as a “mother figure” and described how she spent time with her when she “went through different spurts of mom not being there” (RP 24). Her aunt was “a real good active listener,” gave her advice, spoiled her and even got her a pet, which was her “best friend.” This participant also talked about how her aunt provided structure, stability and predictability in her life:

She had rules, um, I wasn’t able to go outside around a certain time. I was, I had to be in the house and like study and stuff cuz I just started going to school. I think I was in kindergarten or first grade, one or the other, but yeah, she was real big on school and making sure school comes first, so yeah, cleaning my room, like teaching me life skills at a young age (RP 24).

Another participant talked about the affection and love she felt for her grandmother because of the way she looked after her. This was in stark contrast to how her biological mother related to her (she received social services from the DHS to address her mother-daughter relationship):

She was like, what can I say? She like a slice of sweet potato pie at Thanksgiving (ah), she was like the best thing that ever happened, she was

real strong, and independent, and sweet, and she cared, and she worried when you were 10 minutes late getting home from school instead of ‘why the fuck aren’t you home yet? Where was you at?’ It was more like, ‘are you okay?’ Did something happen? And she asked those questions that my mom didn’t even think of, she could tell when I was happy, she could tell when I was fake smiling, and it was like... I appreciated that (RP 6).

One participant talked about how much her paternal grandmother meant to her. She was able to have a strong nurturing, loving relationship with her in kinship care; she trusted her and could talk openly about important topics as she was growing into a young woman. She stated:

[I] could tell anything about, like anything and everything I wanted to tell my granmom, I could. Like when I had my first period, my granmom was there for me (wow) and she told me about virginity, virginity and technical stuff because mom wasn’t around (RP 14).

These young women often reflected on their childhood and adolescence in terms of how they were supervised in order to ensure their basic needs and safety were taken care of. They talked about their relationships with their aunts and grandmothers, how they understood them and treated them like human beings, how they knew about their roots, guided them in forming an identity, served as a nurturing, loving adult in their lives, listened to them, took them seriously, made them feel valued, worthy and respected. DHS social workers and other professionals, therefore, can fully understand the nature of these relationships with kinship or other caregivers and how they take care of and nurture them, which potentially can help to reduce overrepresentation in the systems.

6.5 Loss of Kinship Caregivers

Despite the strength of these extended family relationships often evidenced in some of the African American communities, there were participants who did not have such relationships. Whilst ‘middle class’ families may have the financial and other resources necessary to provide caregiving if a family member becomes ill or dies, some of these women lost a caregiver due to illness or death. Consequently, there was no one to step in to ensure they received sufficient support, meet their profound grief with empathy or help them cope with excruciating loss. These young women

did not have a family member or friend with sufficient resources to act as a new caregiver and support their daily survival. Such situations were detrimental to their emotional lives as not only have they lost their most fundamental human attachment and primary caregiver, they were also attempting to adjust to the human vacuum in their lives and the profound sense of abandonment (Herman, 1992). As a result, some participants were terribly traumatised, and the interventions of social services, even when essential, caused further anguish, especially when they were removed from the home and found themselves living with strangers, away from their neighbourhoods and schools. One research participant described the deep sorrow and emotional pain she felt when her aunt, who was declining due to a medical condition, told her that she could no longer care for her and would have to involve DHS as there was no alternative (RP 24). She said:

I just remember at that time being really devastated... I knew my aunt loved me but at the same time, from my mom giving me [to her aunt] and then from her giving me away to DHS, I was kinda of confused at that moment what love was... They would say for my best interests, like they was doing it to better me, so I really didn't understand at that age until I got older (RP 24).

After losing the most important human attachment in their life, some participants were unable to get the human sustenance they needed. This lack of stability, predictability, and love, resulted in some of the girls and young women falling apart emotionally, acting out, becoming “rebellious” and offending, sometimes carrying out multiple assaults and therefore, becoming involved with the juvenile delinquent system (RP 20, see below). In other instances, when DHS intervened and placed them with strangers in a foster care home, the situation was exacerbated due to a lack of nurturing and familiar human connections to family members, friends, neighbourhoods and schools (RP 18, see below). In other instances, moving to their mother's home after years not residing with her or knowing her was fraught with its difficulties and did not result in the desired outcome of a strong maternal figure to nurture a daughter. One participant (who was selling drugs, had deep end involvement in the juvenile delinquent system including placement at the highest level of detention) stated:

My great-grandmom was getting real sick, uh, she was like [elderly] and she was getting real sick, so I moved with my mom cuz, she could take care of

me. She [great-grandmom] could take care of me but she could not take care of me all that much cuz she was sick so that's when I moved with my mom

... that's when I started getting in trouble cuz my mom didn't care and that's when I started getting locked up (RP 31).

Another young woman described how the tragedy of her grandmother's death affected her behaviour and she began acting out, ultimately being charged with multiple assaults whilst attending school and being locked up:

I lived with her, she was like my mom... I was a good kid until like she passed away and then all this bad stuff started happening... like I was in dance school and everything...

I don't know why that happen [her grandmother's death], I didn't know how to deal with, you know what I'm saying, why it happens to good people, so I just took my frustrations out, I didn't want to go school, I became rebellious (RP 20).

Although DHS intervened in situations like this, ensuring that there was a primary caregiver for the young woman, at times it meant opportunities were missed to engage with the young women, to acknowledge their grief and emotional pain, and to listen, take seriously and respect their views about what interventions and services would best support her. As further discussed below, this kind of missed opportunity showed instances where the systems could perpetuate and reinforce disadvantage when the young women had traumatic experiences, losing their most important human bonds and then feeling DHS did not serve them well. The situation could be compounded when the young women felt that they could not directly expressing their intense distress, sorrow and opinions to individuals within the systems who were making decisions about how to meet their needs, safety and/or rehabilitation and they did not feel a sense of compassion and empathy. At the same time, there it did not appear that DHS social workers or other professionals made an attempt to encourage girls and young women to express their views, particularly in engaging them to identify grief support and bereavement interventions and services.

6.6 Child Bearing and the Young Women

It was noteworthy that several of the young women had had children during their mid-late teenage years and that in some instances they chose not to continue with secondary school, which made them vulnerable to DHS intervention for truancy (RP 8) or they dropped out around the time of their pregnancy (RP 12, RP 16). The empirical research showed DHS became involved not only in two participants' lives, but pre-emptively in the lives of their unborn children (RP 8, RP 27). It could be considered that DHS was attempting to regulate their reproduction by setting forth the department's intent to intervene in the lives of their unborn children if they did not cooperate with the department—even when there could be no allegations of child abuse and/or neglect as their children were unborn.

One participant stated that she “got DHS in her life” when the juvenile delinquent judge issued an order referring her to the child welfare system (RP 8). As she was pregnant, this meant that the involvement expanded to include her son once he was born. In another instance, the participant stated that the DHS told her “if I not go to a mother-baby program, then I am going to have no choice but to commit your child [to the custody of DHS] after your child is born” (RP 27). Since these interventions occurred before the babies were born, both participants felt that they were being unjustly accused of child abuse and neglect, which would warrant DHS intervention. They perceived bias against them in the child welfare system which was intending to “take” the babies at birth (RP 8, 27). Such procedures can further explain, then, the overrepresentation of African Americans in the child welfare system.

The action of stating the intention to commit a baby to DHS prior to that child's birth is reminiscent of the early women reformers who as we have seen, borrowed from scientific and medical approaches and combined these with the new ‘professionalization’ in social work to address the “root causes of delinquency” and offer active intervention (Kennedy, 2008; 30-31). It could be interpreted here that there is an attempt to deter poor mothers from early childbearing with the threat of their children being involved in the child welfare system because they are perceived as ‘unfit’ to mother them (and both young women had a connection to the juvenile delinquent system as well, which reinforces this historical premise). In this instance,

the DHS social workers threatened systemic involvement as the means to comply with the department's prescription for their lives, as opposed to encouraging them to express their views, ask questions and discuss pre-natal care, self-care, termination of pregnancies if desired and other pregnancy related topics.

6.7 Education

Whilst the aims and objectives of the education system are to provide children and young people with a learning environment in order to grow, develop, matriculate and have social mobility in society, the empirical research showed how the presence of school officers, law enforcement, mandatory DHS reporters and other professionals can lead to involvement in the child welfare and juvenile delinquent systems. Teachers and other school personnel are mandatory reporters and some women shared that they felt the staff had 'acted out' based on serious concern for their problems. In the cases of two young women, these problems included sexual molestation reports, and they acknowledged that the reporting by the school had helped them (RP 11, RP 25). There were also school security officers to handle conflict and/or there was the ability to have law enforcement officers make an arrest, as discussed below, as well as police presence on or near some of the schools where the young African American women grew up in certain instances.

The empirical research gave an example of a school relying on DHS to intervene when one participant had 'behaviour' problems in second grade. The school made a DHS report and formally implemented wraparound services in order to support her (RP 6). This intervention was in response to behaviour which was seen as 'acting out' and arose in part from her confusion and anger with children in school who were bickering with her and taunting her saying things like ("your mom's like a boy"). The taunts created terrible hurt at a time when she was already dealing with her mother's serial relationships, alcoholism and tendency to put them before her children and to treat their children better than her own. The young woman acknowledged that she became a "real behaviour problem" in school. She regarded DHS intervention and wraparound support services, as "building her strength," helping her to withstand "what she was missing from her mom." Instead of feeling victimised by her mother's treatment of her, the children teasing her at school and

the school's perception of her as 'acting out,' she felt DHS addressed her misery and filled the need she had for a nurturing adult in her life. She described why her wraparound worker was so important to her well-being:

I know like as far as in school support and after school support and people coming home to counsel you, it worked. In all actuality that it helped me, it built my strength to be able to withstand the, like whatever I was missing between my mom [and me], whether it was communication or affection, or like, actually needing her to be not just a mom but my protector [...](RP 6)

Despite this participant's positive experience with DHS, the data typically showed schools addressing 'acting out,' aggression and violence by using school discipline procedures which sometimes progressed to sending young women to alternative schools or involving law enforcement rather than educational and social services and working with the parent(s) to address the roots of the problem. Some participants described how their initial involvement in the juvenile delinquent system began at a young age when law enforcement addressed their 'behaviour' at school with an arrest, case processing and detainment. Although the women described incidents involving 'acting out,' hostility, aggression and/or violence as the ones more often responded to by police, the research participants also described the school officials using law enforcement as a punitive measure. Several of the participant's life narratives describe how schools used the law to manage their behaviour, regardless of their young age. They described incidents that seemed to show how school officials interacted with police in order to manage them in their school environment. Thus, it may be observed that the use of school officials and police to handle disciplinary matters can further increase the likelihood of African American girls becoming involved in the child welfare and juvenile delinquent systems.

Not only did some young women have involvement in these systems when attending school, but their initiation into the child welfare and/or juvenile delinquent system began in the school environment (RP 11, RP 18, RP 20). The study showed the schools initiated a process whereby after a certain point, the disciplining of a girl was escalated and resulted in her entering the juvenile delinquent system. This point is important because, whilst the education and child welfare systems are designed to

focus on child well-being and learning, the study appears to show that school discipline was at times meted out by personnel and/or police in a manner more aligned with ‘punishment,’ with infractions of the rules and alleged delinquent acts treated as crimes. Moreover, given that the young women are in close proximity to law enforcement at school, interaction rates are higher and the chance of official involvement by law enforcement agencies is much greater than it would be for more advantaged students attending schools without this presence.

For example, one research participant, who was a pre-teenager at the time of the incident she recalled, described how the police came to her school, put her in handcuffs, brought her to the police station and called her mother to address her ‘behaviour’ (RP 18). The police decided not to process her case as they considered her too young to be processed in the juvenile delinquent system. Instead, her mother collected her from the police station and they were referred to the Crisis Center for emergency mental health treatment and evaluation. Whilst she may have suffered from mental illness requiring immediate attention, the question here is whether it was necessary for the school to involve the police in managing her ‘behaviour,’ or whether the matter could have been addressed more swiftly and with less confrontation if they had directly sought emergency mental health evaluation and treatment. In this case, the young woman described how her involvement in the child welfare system continued and she how she felt she had been labelled as “crazy” in response to her behaviour. The approach used in this example indicates how African American girls and young women have come to be overrepresented in the child welfare and juvenile delinquent systems. Had the school contacted the parent directly and encouraged the parent to take the child to hospital, it is far less likely that the systems would have become involved, certainly at that early stage.

Another research participant stated that she was “incarcerated” in middle school after a fight and “beating up a girl really, really bad” (RP 20). She assaulted a woman who was about 10 years older and this woman pressed charges on RP 20. The next day the police came to school and “locked her up”—putting her in handcuffs before taking her to the police car and keeping her at the police station for hours in a “box” until her mother picked her up. She was charged with multiple assaults. Whilst she had committed assaults under the penal law, the background was that her

grandmother, who was her caregiver, had recently died. This underlying trauma did not prevent her being expelled from her mainstream school and transferred to “behaviour school.” This move later led to truancy because she did not like the new school and stopped attending it. She described the school and why she despised it:

You have to get searched every morning, you can’t bring your lunch, I don’t think you can wear a coat, you don’t have no book bags, you can’t bring like... There’s no homework, you have to like... your classes is like little elliptical, you have to go through doors to get to your next class, the kids are like very disrespectful, you can’t learn nothing, so I didn’t like to go. I couldn’t even learn because kids disrupting class (RP 20).

Again, there was a domino effect because the system did not acknowledge, assist or accommodate her when she was experiencing the excruciating loss of her grandmother. Instead, she was left to struggle with her resulting problems without appropriate emotional support from social services. Ultimately, her poor school attendance meant she was placed in a residential treatment facility, which she actually liked very much. However, there were several points in her adolescence where she had perhaps unnecessary or heavy-handed contact with different institutions and social structures. They failed to stem the tide early on by addressing the root cause of her behaviour: the profound grief, bereavement, personal struggles and trauma which she was experiencing. This type of failure can be seen as contributing to the overrepresentation of African Americans in these systems. DHS social workers, attorneys or other professionals, however, could have engaged the young woman to talk about her struggles from the outset in order to address her trauma with again grief support and bereavement interventions and services, as well as identifying a school that would challenge her intellectually and further provide peaceful workspace for studying.

Another young woman recalled that an early teenager she picked a fight and poked a girl with a pencil in school (she described it as “stabbing” her) (RP 11). The school officials expelled her from her school and she recalled: “I went to prison” (to the juvenile detention centre) and “stay a couple months and then earn my way out.” Her aunt had raised her until she was 10 years old, at which point she returned to her mother’s home where she struggled to relate to her mother and began to have problems. The school, however, treated her act of violence as an instance of formal

offending, and also expelled her. She was thereafter adjudicated through the juvenile delinquent system; the underlying trauma, that had arisen from the sense of abandonment and loss she felt when her aunt ceased to be her primary caregiver, went unaddressed. Like the previous participant, she did not receive the social services interventions necessary to address her loss and grief with sensitivity and empathy. Consequently, her problems continued and she was engaged not only by law enforcement but was also processed through the juvenile delinquent system.

DHS did not intervene to address other issues in the home until this same participant was attending high school (RP 11). The involvement then came about because she was sexually molested by her step-father and “my mom did not believe me.” She told a trusted school counsellor who made a report to DHS. Thereafter she reported multiple traumas (which may have been linked to the earlier trauma of arrest and detention). She stated that her mother told DHS she was “crazy and all this stuff.” This made her feel victimised, particularly as DHS responded by placing her in in-patient psychiatric facilities which she ran away from, and then also recalling “bouncing from house to house” in multiple DHS placements. She experienced these interventions more as punishments, rather than compassionate and thoughtful responses on part of DHS. She reacted “by not listening to people, doing what I wanted to do,” although she did not report any further involvement with law enforcement and the juvenile delinquent system. If she had had appropriate interventions and services from the start, it may have been more likely to stem the tide of instability in leapfrogging placements and thus, settle down into one (instead of contributing factors to overrepresentation of African Americans in the child welfare and juvenile delinquent systems). A DHS social worker or other professional could have been consistently available to encourage an ongoing dialogue about her placements and swiftly address difficulties, including collaborating with the young woman in identifying alternatives which are more tailored to her needs and safety.

It is important to recognise that ‘middle class’ parents may be able to avoid this type of school environment as they tend to live in residential neighbourhoods with better schools or can afford to send their children to parochial or private schools. More importantly, these parents tend to be “in sync with patterns of dominant culture” and they are at “ease with school officials, social workers, psychologists, medical doctors

and other professionals [who] issue standards for proper child rearing practices,” whereas families from a lower class are often not (Lareau, 2002; 249). Middle class parents are equipped to meet these professional standards, they benefit from “exceptional verbal skills,” “the ability to use language with reasoning,” the “negotiating skills to achieve specific ends” and a knowledge of “how to effectively interact with institutions” (Ibid; 111, 120). Moreover, they tend to “closely monitor their children’s institutional experiences” including their experiences with race and ensuring cultural diversity in school classrooms (Ibid.; 173). Overall, they are more likely to command respect and be taken seriously when negotiating their way through these institutions and social structures.

6.8 Neighbourhoods and Housing

‘Middle-class’ families usually have the choice to live in reputedly ‘safe’ neighbourhoods where crime is not prevalent; their neighbourhoods are usually removed from the regular shootings and murders which can devastate lives in deprived areas. There are unlikely to be abandoned houses and/or defunct businesses in these areas. In contrast, the participants talked about the trauma they experienced whilst living in communities where people were routinely shot and in some instances, killed. These traumatic events can “breach the attachments of family, friendship, love, and community” and “destroy the victim’s fundamental assumptions about the safety of the world, the positive value of the self, and the meaningful order of creation” (Herman, 1992; 51). For many women, these horribly traumatic experiences can destroy their realities, almost inevitably contributing to their overrepresentation in the child welfare and juvenile delinquent systems.

One young woman stated, “there a lot of deaths in our family, that’s why I was like... been through a lot growing up” (RP 15). This participant was living in a foster care home when an argument broke out between two women in the middle of the night. The dispute resulted in one woman shooting dead the other. As potential witnesses, RP 15 and her sister were taken to the police station for questioning and then placed in foster care (they were pre-teenagers). This participant was severely traumatised by the brutality and tragedy of this event. The impact on her was so great that she considered it as contributing to hallucinatory experiences and therefore, to

multiple in-patient hospitalisations to manage her suffering, pain and mental illness into her adolescence (RP 15).

It was not unusual for the young women to report having witnessed such violence. RP 24 saw her ex-boyfriend killed right in front of her; he was shot multiple times and died because it took so long to get to the trauma centre from their location. Another participant witnessed the shooting of a teenager in front of a corner shop (RP 22). One participant developed a relationship with her mother when she was in her mid-late teenage years, only to experience her mother being murdered shortly thereafter. She stated:

... she shot in her head and it was all over the news and um, I just remember you know like, me passing out and like the police there...I was so out of my mind (RP 28).

Other participants described how family members and other members of their community experienced premature deaths due to gun violence. One participant had a cousin shot and killed in his mid-late teenage years (RP 31); another participant's brother was killed at a young age (RP 25).

The experience of such intensely traumatic events can also have a powerful psychological impact including "hyper-arousal when the human system goes on permanent alert, as if danger may return at any moment" (Herman, 1992; 34). A number of the women interviewed described having "sleep disturbances, persisting in sleep and when awake"; one participant stated that she "wakes up at night sometimes thinking about it" (RP 22; Ibid.; 35). Another participant further said, "I still have like night terrors about what happened to me at the house and what could have been avoided and stuff like that, but you know I try my hardest not to think about it" (RP 29). Still another stated that she had been unable to sleep and was hearing voices until prescribed an atypical anti-psychotic medication (RP 18). The latter two examples did not involve a murder but sexual molestation which gave rise to similarly profound psychological suffering.

Moreover, some traumatised people “relive the event as though it were continually in the present. They cannot resume the normal course of their lives, for the trauma repeatedly interrupts it. It is as if time stops at the moment of trauma” (Herman, 1992; 37). Many young African American women live in just such environments, may have a diminished ability to restore meaningful connections and relationships and lack the resources to therapeutically process trauma (partly due to its ongoing nature) (Ibid.). Amongst the women interviewed, there was not always a direct link between personal or community violence and their own involvement with the systems, but in some instances there were young women who had more interactions with a range of government systems when a family member or friend was harmed or murdered and they were traumatised—thus, leading to overrepresentation in the child welfare system to address it.

6.9 Conclusion

In many instances, the young African American women became vulnerable and exposed to the child welfare and juvenile delinquent systems as a result of ‘traumatic events’ and ‘prolonged, chronic trauma’ based on an accumulation of their lived experiences (Herman, 1992). Whilst they typically lived in poverty and had limited resources, it was not only the lack of basic needs that resulted in their involvement in these systems but the host of accompanying social problems and the ongoing effects of living with trauma. In many cases, the absence of a caregiver usually due to illness, death or incarceration meant they did not have an ongoing nurturing, loving adult who was able to supervise them in a stable, predictable home. This lack in itself typically created further trauma at a time when they were coping with shocking losses and profound grief. Even when involved with the systems, most women felt their needs had not been sensitively addressed and that there was a lack of equanimity and compassion, which had further contributed to their trauma. In some instances, these feelings snowballed and women were utterly overwhelmed by the negative, dismal and traumatic experiences of their early childhoods, experiences which continued to adversely affect them right into adulthood. This was particularly the case when the systems themselves reinforced and perpetuated disadvantage, at times, creating ‘messiness’ as the women transitioned through the systems. Consequently, they did not trust DHS social workers and other professionals to act in

their interests, and they were distressed and feeling the systems did not support their important relationships with close family members and/or friends.

Without intensive research, it is a long stretch, to attribute their lived experiences directly to the legacy of slavery and recycled ideologies, however, the empirical research shows how the accumulation of ‘traumatic events’ and ‘prolonged chronic trauma’ from their lived experiences, including those in the child welfare and juvenile delinquent systems, created a miserable existence for some of the women who faced profound struggles to cope and get by (Herman, 1992). Given the nature of their lives and the traumas they live with, many of the young women continue to be vulnerable, exposed and/or involved with the systems—yet another contributory factor to the overrepresentation of African Americans in those systems.

Overall, the girls and young women may resist opening up to DHS as they perceive the department as interfering in their lives and ‘taking’ them from their mothers. Their perceptions may generally focus on DHS as pointing the finger at their mothers as the perpetrators of ‘neglect’ in their lives and perceiving DHS as characterising them as a ‘bad’ mothers who fail to take care of her children (RP 7). The girls and young women may also perceive DHS characterising their fathers as perpetrators because they are ‘locked-up’ and/or their lives appear to revolve around the criminal justice and prison systems (and increasingly with their mothers’ involvement in these same systems). Exploring the undercurrent for these perceptions could, thus, shed light on the basis for racial, gendered and classist labels, stigma, and stereotypes, and how they are linked generationally to characterising them, their family, friends, neighbours and communities.

Moreover, such exploration could go a long way towards explaining the basis of overrepresentation of the girls and young women in these systems as at least partly rooted in American history. Whereas this chapter is designed to explore the overrepresentation of the young women in the child welfare and juvenile delinquent systems, it also shows how ‘child participation’ could further be a factor in whether the traumas continue to perpetuate themselves in the daily lives of the girls and young women as well as within the systems. DHS social workers, attorneys and other professionals can assist the girls and young women to explore identifying how

to maintain and cultivate relationships which are important to them, including whilst a parent attends substance misuse treatment or is incarcerated as well as connecting with other adults who can serve as stable and inspiring persons in their lives.

The next chapter focuses on the routes taken by the young women took as they travelled through these systems. It considers the nature of these systems, how they can overlap, intermesh or have cracks and gaps and how these impacted on the women. The chapter further considers the actual lived experiences of the young women and the traumas they have experienced, whilst examining how the systemic responses may have failed to fulfil the aims and objectives of assisting the young women to cope and to thrive. Specifically, this chapter seeks to understand whether these responses contribute to the traumas experienced by the young women, compounding the misery in their lives rather than alleviating it, or whether they do in fact meet their needs. Moreover, this chapter analyses these routes in considering how the girls' and young women's role in decision making could reduce the length and depth of their penetration into the child welfare and juvenile delinquent systems.

CHAPTER 7:

Run and Tell That to the Child Welfare and Juvenile Delinquent Systems: Analysing the Lived Experiences and Life Stories of Young African American Women, Their Routes and the Systemic Responses

7.1 Introduction

This chapter considers how African American women enter, move within and exit the child welfare and juvenile delinquent systems in Philadelphia. It contemplates how the legal approach and framework surrounding these systems, namely their aims and objectives, case processing, adjudication and disposition under state statutory law, shape their interactions with them. In addition to considering the main legal components of these systems, this chapter explores how the interviewees regarded their experiences, particularly in relation to the discretionary and decision making powers accorded to stakeholders and decision makers such as social workers, law enforcement officials, attorneys and judges. It discusses whether and how the systems responded to their lived experiences within the standard structural processes: removal from the home, foster care, congregate care placements, residential treatment facilities and secure detention and visitation schedules. It also looks at the impact the bureaucracy had on the young women.

As we saw in chapter two, the discretion afforded under state statutory law in decision making, and the nature of systems' structural processes, can result in confusing and problematic interplay as described by the young women about child welfare and juvenile delinquent systems. Reflecting on the transcripts of the 26 women interviewed, this chapter looks more closely at the reality of the circumstances. There is a critique of the systems, looking at whether they constructively benefitted the young women or whether in fact they created, perpetuated and/or reinforced negative behaviour patterns, 'traumatic events' or 'prolonged chronic trauma,' particularly when social and economic conditions were beyond their control (Herman, 1992). Finally, the chapter identifies instances where

the young women's participation in decision making may have alleviated some of the pain in their lives if they could have described the totality of their circumstances.

7.2 Child Welfare and Juvenile Delinquent Systems

7.2.1 Aims and Objectives

As outlined in chapter two, the aims and objectives of the child welfare and juvenile delinquent systems are focused on basic needs, safety and rehabilitation, however, the young women reported a mixture of lived experiences that did not necessarily reflect these intentions. Whilst some women had beneficial experiences, others described experiences that contrasted with these aims and objectives. Their interviews described the experience of 'traumatic events' and 'prolonged, chronic trauma' that were at times related to the insensitivity of personnel and the resulting failure to acknowledge, assist and accommodate them (Herman, 1992). Their circumstances were particularly dire where the loss of a parent or primary caregiver and the accompanying sense of loss and abandonment were compounded by the child welfare and/or the juvenile delinquent systems, which failed to respond with empathy and compassion. As we have seen, such circumstances often emerge as a result of poverty and combine to contribute to the overrepresentation of African American girls and women involved in the systems.

7.2.2 Engagement with the Child Welfare and Juvenile Delinquent Systems

There are general facts related to the African American young women's engagement with these systems. Eleven of the 26 young women first entered the child welfare system (DHS or 'department') and then the juvenile delinquent system; their routes did not overlap (RP 3, RP 6, RP 7, RP 17, RP 18, RP 21, RP 22, RP 24, RP 25, RP 28, RP 31). Five of the participants first entered the juvenile delinquent system and then had involvement with the child welfare system and in these cases, there was no crossover (RP 11, RP 14, RP 20, RP 23, RP 30). In addition, one young woman entered the juvenile delinquent system when the judge issued an order referring her to DHS ('shared case responsibility')(RP 8). Nine of the participants had

involvement in both the child welfare and juvenile delinquent systems where there was an intersection between the two systems. These participants described the overlaps as being treated separately in each of the systems (RP 10, RP 12, RP 25, RP 16, RP 18, RP 19, RP 26, RP 27, RP 29).

Prominent themes emerged from the research related to the young women's lived experiences and how trauma impacted their lives. Whether their trauma originated from their personal circumstances and/or the way in which systemic responses affected them, it often had a bearing on the routes they took through the child welfare and juvenile delinquent systems. These systems do not necessarily have an even-handed approach to providing interventions and services designed to alleviate trauma. The empirical research showed that some women perceived DHS as overly bureaucratic, indifferent or even callous in its response to their troubles. Other women perceived the interventions they had experienced as being punitive in nature, regardless of whether they came from the child welfare or juvenile delinquent systems. In contrast to these perceptions, there were young women who had positive experiences in their placements and services; their emotional needs were met, they found consistency in connecting with a named social worker or therapist on a regular basis or developed a longstanding attachment to a caregiver who became an adoptive parent or permanent legal custodian in some instances. These women were very grateful to belong to a family with tight bonds and a stable, predictable home life. Two young women had positive experiences in their placements including a residential treatment facility in the child welfare system and a secure detention facility in the juvenile delinquent system.

Although poverty is the prevalent basis for involvement in the systems, the empirical research showed that this was often accompanied by a sense of deep loss and/or abandonment and grief and bereavement. Several women who expressed feelings of despair arising from their parents' inability to care for them or the death or the illness of a caregiver also related to how systemic responses such as removal from the home, problematic therapeutic services, inconsistent and infrequent visitation, multiple placements and in some cases, secure detention had adversely affected them. It became evident that the young women seldom engaged in dialogue with DHS social workers, attorneys and other staff in order to address their thoughts and

feelings of deep loss and abandonment in their lives, as well as their struggles with systemic responses that aggravated rather than assuaged their grief.

7.3 Troubled Children and Children in Trouble with the Law

The definition of ‘dependent child’ in the child welfare system refers to a child who is without the ‘parental care or control, subsistence or education’ necessary for her physical, mental or emotional health and morals, as stated in chapter two (42 Pa.S.C.A § 6302, et seq). The definition of ‘delinquent child,’ on the other hand, means one who is 10 years old or more at the time of committing delinquent acts and needing ‘treatment, supervision and rehabilitation’ under the statute. The conceptualisation of the young women, however, as “troubled children and children in trouble with the law” was a prevalent theme, indicating that a child may be “perceived as ‘deserving’ if involved in the child welfare system, but regarded as a ‘threat’ or ‘offender’ who is ‘undeserving’ when involved with the juvenile delinquent system” (Goldson, 2002). It was apparent from the study that in some circumstances, a child who was troubled but not involved with the child welfare system could instead become involved with the juvenile delinquent system. Some young women described profoundly wrenching life experiences, born of troubled backgrounds which led to their becoming engaged with the juvenile delinquent system.

In this way the ‘traumatic events’ and/or ‘prolonged, chronic trauma’ in the background meant that the troubled child also became a child in conflict with the law (Herman, 1992). Some women acknowledged having manifested anger, aggression and violence in response to traumatic circumstances (Simkins and Katz, 2001). In some instances their ‘behaviour’ led to involvement in the juvenile delinquent system despite needing social services and interventions to cope with the painful conditions in their lives. The research showed that whilst the women identified themselves as having been troubled and/or in trouble, this was not necessarily how the systems viewed them and therefore the responses were not necessarily tailored to their needs. For example, some women described feeling as if they were being treated punitively in the child welfare system such as when removed from the home, whereas they needed compassion and empathy to assuage the trauma in their lives. It

became evident that the systems were not necessarily designed to meet the young women's needs, safety and/or rehabilitation, potentially contributed to overrepresentation in the child welfare and juvenile delinquent systems.

7.4 Understanding of the Child Welfare and Juvenile Delinquent Process: Confusion or Clarity?

When young women are adjudicated dependent or delinquent, the judge must decide their disposition and whether DHS shall implement in-home supervision or remove the children from the home and place them in out-of-home placements. Despite the different aims and objectives of these systems, there were young women who were confused about the nature of their placements and did not know the backgrounds of their peers. When asked about the young people in her placement, one participant said "I don't know, I don't know who they is...I don't know who was in DHS, who was like that" (RP 10). This participant was placed in the child welfare system, but was also involved in the juvenile delinquent system as she was arrested for retail theft. She was very clear about her routes through the systems but did not have that understanding about her peers. Another participant had some confusion about her child welfare placement, stating: "they was all really angry, like some were nice, some were like mentally disturbed" (RP 20). When asked, she knew girls who had been in trouble with the juvenile delinquent system and that everybody had a DHS social worker, but not whether they had been arrested, explaining: "I don't know everybody's story." One participant regarded her transfer from a foster care placement to an independent facility as being "put away" because when "you can't follow the rules of the foster home, they send you away...you're going to be in a locked down facility... you're going to get punished" (RP 5). Despite stating that she did not have an adjudication of delinquency, she reported that her placement was located in a juvenile delinquent centre. She was further unable to explain how breaking the rules of the foster care home had led to her transfer that she described as a "locked down facility."

It appears that the child welfare and juvenile delinquent court judges issued orders to place the young women and that the same facility might house girls and young women engaged in one or both systems. There were young women who could not distinguish whether their peers had been placed to address child abuse and neglect

and/or rehabilitation. When the boundaries are blurred in this way, it is easy to see how ‘messy’ situations may arise, whereby there is general confusion about how the systems should act in order to appropriately meet each child’s needs. It also appears that the young women may not have sought, received and/or imparted the necessary information to yield a clear understanding about the basis for their out-of-home placements (Parkes, 2013; 40). It is at least partly questionable whether interventions and services were tailored to the young women when they were living in out-of-home placements with peers from both the dependency and delinquent systems.

Some participants, however, saw clear boundaries between the two systems (RP 23, RP 25). One woman stated: “I never thought of two in one setting” (RP 26). Another participant did not see the systems as converging, stating: “When I was in foster care it was basically, find her a home to go to, see you later, see you when something crops up but they can’t keep me anymore” (RP 19). This participant experienced multiple placements and was clear about the basis for her transfer from a group home in the child welfare system to a juvenile delinquent placement due to an offense she committed at the home. Unlike the other women who could not discern the nature of their placement from interacting with their peers, she was clear that her juvenile delinquent placement was spent amongst “offenders.” It may be that she was able to make this distinction more easily as some of her placements had been in foster homes where she lived with a foster parent before moving to a large residential setting in a juvenile delinquent facility. These young women had more difficulty distinguishing their types of placements in congregate care or residential treatment settings and they did not experience sufficient difference between these settings and the juvenile detention facilities to differentiate between the two. On the other hand, if the girls and young women could participate and address their difficulties, the professionals could potentially collaborate to identify suitable placements where they felt less anxious and distressed and thus, they settle into their placement and daily routines with major disruptions.

7.5 “It’s An I Don’t Care World”

General Bureaucracy in the Child Welfare and Juvenile Delinquent Systems

Some women regarded the child welfare and juvenile delinquent systems as reflecting one bureaucracy, regardless of their aims and objectives. These viewpoints are important as such perspectives highlight how the child welfare and juvenile delinquent systems can be perceived as overarching in their approach and framework. The notion of ‘group think’ was associated with personnel working in both systems who appeared to treat the women in a way that focused predominately on satisfying administrative and legal requirements to ensuring structural processes were implemented and maintained. The systems can be perceived as blurred depending on who provides social and/or rehabilitative interventions and services and whether these are provided in a manner by which the girl or young woman is not made to feel like a statistic and disrespected. One participant stated:

... it seems like the same people, the same agency...like my DHS worker and the people in the placements all knew each other, they went to school together and stuff like that, like they got their degrees in the same schools and, it was real creepy (RP 18).

She further regarded this as contributing to a system which fails children:

... it was like, the system is designed for people to fail, like they all work in cahoots, you know what cahoots is [yeah]. Cahoots is basically when they work together to design us just to fail. So we’ll fail, like they’ll do certain things, they will put us in a certain place knowing that we’ll not get along with people in this place, we’re going to get in trouble and we’re going to be there longer and they’ll get paid more money... (RP 18).

This participant described her multiple placements in both systems with clarity, at the same time regarding the personnel from each as being essentially the same people. She also viewed these personnel as being intentionally against her, rather than attempting to help her by implementing effective social services and/or rehabilitation interventions and services. Other participants discussed the bureaucratic nature of the ‘system’ which they saw having little interest in the foster parents’ qualifications for having a child in their home, much less caring about their human development (RP 19). One participant stated, “whatever family that wanted a

child then, they just, okay here go paperwork, sign paperwork, sign off on it, okay you're qualified" (RP 3). She went on to say:

[The] system does not care once you go through. Government does not care once you go through. It ain't [their] family member, it ain't [their] child, technically they don't care. This is 'I don't care world.' (RP 3).

From another perspective, one participant described the system as being financially self-interested: "people so money hungry in the system, it just take the money and you know, nobody ever tell what it really for" (RP 7). Likewise, RP 18 also referred to placement decisions as being based on "how much money they're going to make." She commented that the system (and the people connected to it) were thinking "our generation is stupid and don't deserve to be in society" (RP 18). Another participant gave the examples of two different social workers, saying: "you got some people who really care for you and some people who really don't care" (RP 24). Some of the participants characterised the system as a bureaucracy designed to supervise, monitor and track human beings, rather than sincerely and honestly meeting with children and young people, paying attention to them and their emotional lives. One woman described how she felt hurt because people would think their biological parents did not want them:

I felt as though because we were in the system that we was just like these horrible children and you know it would be...they would say, you know, I don't want to take care of you anyway... and that's why your parents did not want you, because you aimless now (RP 27).

Ironically, by over focusing on legal and administrative requirements in order to comply with structural processes, rather than taking a personal interest in an individual, social workers can actually contribute to feelings of abandonment, neglect and rejection. This is disturbing when the systems are allegedly designed to provide tailored interventions and services in order to address underlying child abuse, neglect and/or rehabilitation, which can be related to forging and supporting human connections, attachments and relationships. For girls and young women with such complex social and economic problems, removal from families and out-of-home placements can be exceedingly traumatic, and detached, indifferent personnel can compound their distress. With some of the young women, there was also a sense

of contempt and pessimism aimed at a large group of administrators who they believed failed to contribute to their welfare by focusing on complying with procedures to maintain government structures, rather than developing secure ongoing relationships with them. From the outset, DHS social workers and professionals could forge relationships with the girls and young women in ongoing decision making whereby encouraging them to share openly and contribute meaningfully to decisions could potentially assist them in negotiating rocky waters and complying with tailored interventions and services.

It is worth noting that one participant did speak with optimism about what she was now doing with her life. She felt that she had been treated as a human being, not a statistic throughout her involvement in the system:

... some people say like you a statistic because, like you in that category because you have a baby. Like I had my son when I was 19, they [say] like you young and dumb but that's not stopping me. I'm in college and everything, my son goes to day care and I'm about to start working. You only get out of life what you put in life. I don't consider myself as a statistic; I think most people use it as an excuse. (RP 14)

This participant was court-involved for truancy; however, she lived with her mother and grandmother and did not report experiencing child abuse or neglect. The judge in truancy court regarded her mother as a responsible caregiver. Her mother and grandmother both worked full-time and the judge felt that they could reasonably expect a high school age daughter to arrive at school on time and attend all of her classes. She had a retail theft incident which led to police contact, but no arrest. Consequently, she had a low level of involvement with both systems and perhaps it is the basis for why she did not share a jaded perspective about DHS or law enforcement as many of the other women had much lengthier involvement in the systems.

7.6 Child Welfare and Juvenile Delinquent Case Processing: Taken into Care and Taken in Custody

Whilst DHS intervenes in emergency circumstances, the court must ultimately decide within 72 hours whether allowing a child to remain in that home is 'contrary

to the welfare of the child' and that DHS has made 'reasonable efforts' to allow that child to stay in the home (42 Pa.S.C.A § 6302). Law enforcement, however, takes a child into custody via an arrest which is followed by case processing either at a police station or juvenile detention centre (Ibid.). Despite the distinct differences between the two, several young women regarded the child welfare system as being more aligned with punishment than with nurturing their growth and development and maintaining their bonds with family members and friends. Some participants also described law enforcement as treating them roughly during case processing.

7.7 The Child Welfare System: Being Taken into Care Emergency Circumstances and Removal from the Home

When removing a child from the home, DHS has discretion in relation to notification, the manner in which they direct the girls and young women to pack their belongings, how they greet and transport them to an out-of-home placement and how relationships with mothers, primary caregivers and other family members are maintained thereafter. Some participants described the nature of their removal from their mother (usually the primary care giver) as harsh. The removal left them feeling a sense of loss and abandonment, which is a prevalent theme throughout the study when there were absences from primary caregivers. Regardless of the underlying reasons for the removal, the separations could contribute or cause trauma and emotional turmoil for the young women involved. One woman described how DHS removed her from her mother, disrupting her most important human attachment:

They take us in the van, then I know next day they had visitation rights with my mom, somewhere... See mom like every two weeks... DHS came to the house and we just gone, I know we get our stuff and parked there... my mom hug me and kiss me and say she loved me and that's the last time (RP 7).

Another research participant recalled:

They had white vans, big white vans, and they'll pack all your stuff into a van and then they tell you that you got to go somewhere. They won't tell you exactly when beforehand, they'll just tell you pack your stuff, if you already know, you try to run away or something (RP 18).

This participant understood the lack of notification by DHS about her removal to be because she was a flight risk (like a youth offender who may abscond when accused of offenses). The young women's description of the vans was reminiscent of a secured prison vehicle designed to transport offenders to detention facilities. The lack of knowledge about their destinations (foster care homes) and limited visitation rights were also deemed punitive. RP 18 described how being "taken" from home could be damaging and disturbing to the young person's emotional life:

You got anger issues... Everybody in them places, they, they got problems... They in there for a reason, even if it not their fault, they still got problems because they're in there (oh)... because they taken from their families. It can cause, it could cause so much damage, so much damage... (RP 18).

It is evident that the trauma experienced in situations of removal from the family home can compound pre-existing problems and contribute to deeper involvement with the systems. If done sensitively and with care, however, a young woman's circumstances might improve such as when those in authority are inclusive in giving them an opportunity to contribute to decision making when possible (sometimes not possible due to emergency circumstances and the need to remove children from the home immediately).

7.8 The Juvenile Delinquent System: Being Taken Into Custody Arrest, Case Processing, Detainment and Release to Parent or Guardian

The Pennsylvania Rules of Criminal Court Procedure 200, 210 and 220 provide for the arrest, bringing the young person to a detention or medical facility, reasons for arrest, notification to and release to a parent or legal guardian. Several of the participants described their arrest and case processing treatment using terms associated with the adult criminal justice and corrections systems. Specifically, a significant number of women described being 'locked up' when they were arrested and taken to the police station for case processing. Their descriptions appear to have been influenced by their experiences of regularly seeing adults being locked-up. For example, participants stated: "when my father was locked-up" (RP 5), "my mom got locked-up for prostituting" (RP 15), "my step-dad got locked up" (RP 19), mom was "in and out and locked-up" (RP 27), "my dad was locked-up my whole life" (RP 31).

Where participants had been involved with the juvenile delinquent system, they typically referred to being ‘locked up’ from arrest, case processing, holding them in a cell through to secure detention. They described being locked-up for shoplifting and other alleged offenses (RP 10, RP 25). One participant used the term when describing how the principal “wanted to have me locked up,” thus demonstrating the use (or threat) of police power as a discipline method in the school environment (RP 8). Another stated “they locked me up” when the police came to her school, arrested her and transported her to the police station (RP 20). One young woman talked of being “locked-up” as a result of a drug raid. The police arrived with a search warrant and took her “around the corner” where she was told to dump out her pockets; she was found to be in possession of drugs (RP 31).

Whilst young women who had been removed from the home spoke of feeling “punished” and taken away from their mothers, several young women who were arrested reported having felt like “prisoners” or “criminals.” One participant said: “they treat you just like any other prisoner, they’ll lock you up, they treat you bad..., no matter what age you is. If you did a crime, you gotta do your time” (RP 23). Another participant described how although she was not involved with the incident in question, she was treated like a criminal by police; “I was treated like basically I’m a criminal, I was like ‘I didn’t do it, I had nothing to do with it’” whereas he said, “Well, you’re here, you’re an accessory” (RP 30). One woman felt that the police disregarded her viewpoint due to racial prejudice, and thus perceiving her as a potential criminal and subject to arrest even if not directly involved. She stated,

I feel like, especially when it’s children’s case with the cops and everything like that just be; even though we’re children, just because we’re black, you’re a criminal, you’re wrong. You could just be wrong place, wrong time, situation and that would be, ‘oh no, you did it.’ I wasn’t even in the fight, I was just watching the fight and I wind up getting arrested (RP 26).

Participants, who had experienced arrest, also described being detained in a holding cell before release to a parent or being transported to a youth detention centre. These cells were also used for adults and they described rough treatment by the police and harsh conditions. One participant stated:

When somebody put handcuffs on you, you automatically break down right then and there. I'm still a kid so like - have some compassion. They don't care, they throw you in the box, it's cold, they take your shoe laces out and stuff like that. They don't care and I'm still a child... And they put me in a cell with some woman that peed in the cell so and she tried to scare me, but the lady - I scared her (RP 28).

Two research participants described how the police treated them at the police station with regards to their right to remain silent. They encountered resistance and disregard for this right by the police officers: "at the district, they tied me to the bench and they wrote down my name, my address. Mind you I still had not been read my rights" (RP 29). Another research participant stated:

Then the cops lied to me. Because I was only 17, you'all was not supposed to question me without my parent being there. They came and said, 'oh well you could just come down and make a statement,' I'm like 'I called you'll, why you all come and locked me up? I am the one who called you'll to get these girls from my front door... (RP 24).

Experiences such as these where young African American women were subjected to degrading treatment or punishment by police who failed to respect their sense of dignity and worth, can be understandably damaging. In contrast, however, one young woman described receiving better treatment. Significantly, she was not regarded as a 'problem child' and when a fight broke out after school and the police became involved, she felt that she was treated differently from those who had a reputation for bad behaviour, stating: "They didn't treat me like criminal or nothing like that" (RP 17). She had not experienced any formal involvement with the juvenile delinquent system and further stated:

We wasn't none of the problem kids that always sent down to the principal's office, never got writ up or a pink slip or nothing like that... We was always the good kids, like we went to every class, never cut a class, always there on time and everything... They didn't handcuff us cuz after the fight, we was just like all calm, just like [the police said] "we just need you'll sit in the back [of the police car] until we get this straightened out..."

I think they think of us as children not as in we was criminals, like everybody make a mistake, everybody gotta learn from their mistakes. They was there to support us learn from our mistakes, they like we got in an altercation so just learn from it (RP 17).

The police did, however, take them to the police station to give a statement and did not delay questioning them until a parent or guardian was present. Despite this, the woman felt she had been fairly treated. RP 25 also explained that in her dealings with the police, she did not feel that she had been treated like a criminal. In general, however, the young women interviewed described their experiences in these systems as being less than supportive in addressing their problems. Whether children are removed due to emergency circumstances or young women are arrested, on the other hand, personnel working for DHS or law enforcement agencies have the discretion to decide how to manage these circumstances and how they treat and relate to the young people.

7.9 Visitation Whilst in Care or Custody

The systems are responsible for ensuring a child is secure in the knowledge that after her placement she will be able to maintain consistent, reliable contact with her mother and other family members whilst having a reliable sense of her future, how she will be taken care of and feel emotionally secure. Some young women described their thoughts and feelings about visitation and these were similar regardless of whether the child was placed in the child welfare or juvenile delinquent systems. One participant very much appreciated her foster mother allowing her to visit her mother for full days at the weekends; one was very hurt by the lack of consistent, regular visits with her mother, whilst another was angry that she had been unable to see her siblings (RP 5, RP 23, RP 18, respectively). Another woman shared: “I really wanted to see my mom” (RP 7). She was hurt that her foster parents were not conscientious about this and did not give her the bus tokens she needed to make regular visits. This participant was placed in the juvenile delinquent system during her adolescence, she perceived that the lack of concern about her seeing her mother continued:

I was in here and I was just so mad anyway because my mom couldn't see [me], they put me out so far... My mom saw me one time I was, been there then... A lot of stuff happened - my grandma died... A lot of stuff happened; could do nothing about it (RP 7).

She got to “talk for like 10 minutes” with her mom in one of her placements and explained that the personnel “never ask how we felt, no questions, not talk to a social worker and miss my mom and all that” (RP 7). In instances such as this, where the child welfare and juvenile delinquent systems are charged with taking steps in order to prevent harm to the child, the lack of consistent, regular visits can contribute to or cause emotional damage. When the systems fail to ensure girls have scheduled visits, their disappointment is serious. They feel systems are punishing them, rather than focusing on their welfare and eventual return home. This disappointment and frustration can give rise to anger and ‘acting out’ that, in turn, can result in deeper penetration into the juvenile delinquent system. Instead, the professionals could immediately initiate discussions with the girls and young women about visitation with family members and thus, swiftly begin arranging for visits and consistently following through in order to ease their emotional suffering and pain resulting from their separation from family.

7.10 Sense of Loss and Abandonment by Parents (Biological Mothers)

The child welfare system is designed to hold family preservation at the forefront of its practice whenever possible. It is not always possible, however, and a number of young women described feelings of bitterness towards their biological mothers for failing to remedy the circumstances which led to their placements. In situations where reunification was not achieved, the young women described a profound sense of loss and abandonment, which stayed with them, later in life. From the life stories the women shared, it seemed that DHS did not at times put interventions in place in an attempt to alleviate the pain of separation, even when family reunification was not achieved.

Some women were deeply affected when their “fundamental assumptions” were challenged by their mother’s “breach of attachment” in choosing her addiction over taking care of them (Herman, 1992; 51). At the same time, as regarding DHS as taking them from their biological mothers, several participants indicated that they felt frustration with their mothers for failing to ‘get clean’ and take care of them. One

woman described feeling deeply wounded that her mother “put” them in the system as she was unable to care for them due to addiction:

Uuh, my relationship is not where it should be with her. I have a lot of animosity towards her because I felt as though ‘you put us in the system and you never came back to get us.’ Like, I didn’t feel as though drugs more important than your children... I mean I talk to her you know, I see her you know, she come by, she plays with my children, but my relationship not where it should with her (RP 27).

The participants were clear about their severe disappointment when their mothers failed to live up to their expectations as the primary nurturer in their lives. One woman described desperately waiting for her mother to arrive at a mother-daughter school event in middle school and how deeply hurt she was when her mother failed to attend (RP 22). “After waiting all that time for her,” she said it was “horrible, terrifying” when she did not show up. Occasions such as this disrupt or break the attachments and connections between parent and child, with the child seeing it as evidence of the mother’s lack of interest in her life, and feeling rejected rather than loved and cared for (Herman, 1992; 51). Another participant experienced intense anger and animosity towards her mother who she regarded as having failed to live up to expectations as a nurturer:

...even though I had mom ...I didn’t feel like I had a mom...it makes a whole difference when you have one and they are not there (RP 6).

Her rage and anger were compounded as her mother had also grown up in the system and she felt should have done all she could to avoid history repeating itself. She elaborated about how her mother’s failure to do this had affected her emotionally, recalling how she had expressed her anger by hitting her mother with a piece of furniture:

... you go through foster care... you know what it’s like to be abandoned, to not be cared for, why you want to see me go through that? Why you not care? And I care about everything, like I’m emotional, I care about a mother fucking run a cat over. This is an issue, not because it left a mess in the middle of the street, it’s because it’s a living thing, (you’re sensitive), that’s why I hit her with the lamp (RP 6).

She explained how hurt she was by her mother's lack of concern and support as she grew up:

... but my whole thing is as a woman, you were once my age, you once felt the way I feel now, and you're with somebody that has children and they're going through things, menstrual things, lots of boys, high school is coming in and they want to a dress certain way, body parts are growing, they're going through the motions and you been through this and you see a woman not nurturing (RP 6).

A daughter's sense of abandonment due to her mother's lack of a nurturing and care challenged her 'fundamental assumptions' about this mother nurturing, protecting and keeping her safe in the world as she is growing into a woman. From the child's perspective, it appeared that as they are her offspring, she should want them to belong to her (Herman, 1992; 51). The young women were at times traumatised by what they perceived as maternal betrayals when their mother failed to take care of them and provide them with a strong human bond and attachment in order to help them adapt to life with physical, mental and emotional security (Ibid.).³⁸ In these instances, it seems there is the opportunity for DHS to support young women, helping them to understand the nature of their biological mother's problems and enabling them to contribute (in age-appropriate ways) to Family Service Plans and Family Team Conferencing. There were some instances of interventions and services provided by DHS which helped to alleviate the pain of the child's relationship with her mother. DHS provided RP 6 with very good wraparound services in primary school when she was experiencing intense problems. These services meant that she had a wraparound worker in the classroom who maintained a consistent, regular relationship with her in order to ensure her emotional needs were met so she could settle down and focus on her school work; she regarded him like an 'older brother' to her and the services worked well.

³⁸ It is noteworthy that the young women rarely gave detailed descriptions about their relationships with their biological fathers (as explained earlier).

**7.11 Systemic Response to Loss of a Parent:
'She was my Backbone, my Frontbone, my Sidebone, my Protector'
(RP 5)**

In juvenile dependency court, DHS (or the agency provider) must set forth a Family Service Plan and the court conducts permanency hearings with the aim of achieving family reunification or, if this is not possible, an alternative permanent home or independent living if an option for an older young person. The court's orders are designed to be "best suited to the safety, protection and physical, mental, and moral welfare of the child" (42 Pa.S.C.A § 6302, et se). Nevertheless, systemic responses to young people which fail to acknowledge, assist or accommodate the child's underlying sense of abandonment and loss, can cause further suffering and damage. An example of this emerged when one woman told of how her mother became seriously mentally ill when she was 9-10 years old. DHS had to place the young woman and her brother in a foster care home, which traumatised her. Her mother did visit them weekly and sometimes stayed for whole days but about two years later, the mother died, leaving her "devastated and depressed" (RP 5). She felt that the response of DHS at this point was callous, treating the tragedy as though it was "a normal thing for them, like they tell somebody a thing like that every day...Just a mom died and move on." She described how they had "no sympathy for me... there was no feelings toward it." She perceived DHS as treating her deep personal loss as routine and failing to be attentive to her, to take her seriously or attempt to help her with kindness and generosity.

Following her bereavement, she did see a therapist for a time but described how her sense of abandonment was heightened when the therapist departed from her job after 4-5 months. After sharing "all my information and everything" and thinking she could be "close to her," this participant was terribly hurt, describing her thoughts and how the experience led to distrust and an occasional lack of control:

When you go through especially what I went through, when you go through things like that, you're supposed to talk to somebody, at least one person, and I felt like I ain't trust nobody, so I kept all those inside of my body and that's why, once in a while, out of nowhere, I would flip out (RP 5).

Her story showed the ups and downs of the system, from the initial failure of DHS to acknowledge the depth of her loss, to the effective response of providing therapy, to the damaging results of the therapist leaving without preparing her emotionally for the conclusion of their sessions. Although intending to prevent child neglect, cases such as this show how easily mistakes can have the opposite effect. RP5 described intense feelings accumulating like a fireball and causing her to “flip out.”

Yeah, it was a fire, it was like my chest was burning... I was irritated, my brain, I was, I had, I had so much energy where I couldn't think no more... It would build up ... and I would become a volcano with all that fire would be in me and then I would explode because I can't keep all that inside me no more (RP 5).

DHS failed to provide ongoing bereavement and grief services to help her feel safe without her mother, to touch her trauma by empathetic acknowledgment, to encourage sustaining memories of her mother, and to guide her from isolation and victimisation to restore and forge new human connections and relationships (Herman, 1992; 155). Instead, she experienced a series of traumatic events and her emotional pain was not met with tender support and comfort from others. Consequently, she described “getting out of range” in the foster home, not going to school and not listening to her foster mother, exclaiming: “you’re not my real mom so you don’t tell me stuff.” She was also one of the participants who was confused about her placement as delinquent; she may have felt victimised by the loss of her mother and DHS’ responses but she also ‘acted out,’ hitting grownups when she was angry and full of rage. DHS could have engaged her in discussion to identify interventions, services and placements ‘best suited’ to meet her needs but instead, she experienced a cascade of ‘traumatic events’ and ‘prolonged, chronic trauma’ with the resulting anger manifesting as aggression and violence whilst she struggled to maintain control of her life. Ultimately, she experienced multiple placements; however, she did feel that DHS had thoughtfully transitioned her therapeutic services to align with these moves. These services may have prevented her penetrating further into the child welfare system (such as placement in a mental health facility)—all which could be a basis for overrepresentation in the systems.

7.12 Systemic Response to Loss of Family Caregivers

As shown in the last chapter, some young women experienced profound loss when their primary caregivers grew old, chronically ill or died during their early adolescence. These young women needed responsible adult supervision, a sense of 'reliable safety,' interventions, services and/or rehabilitation to touch their emotional pain. When such services were lacking or not delivered with compassion and empathy, it was common for multiple and complex problems to arise. In some instances, the juvenile delinquent system served as a conduit when they 'acted out' with aggression or violence. This was the case with RP 20 who we met in the last chapter. She had incurred several aggravated assault charges after her grandmother died when she just became a teenager. She described being "angry from, from like neglect - shit happens." She felt victimised, helpless and abandoned; her feelings were intensified when she went to live with her mother. Her mother's family were largely strangers to her and she felt the loss of having familiar people to support her. After her transfer to a 'behaviour' school, as we saw, she became a persistent truant; she would run away, stay with her girlfriends and do what she wanted to do. At court, her mother told the truancy court judge, "you'll can just take her" (RP 20). The judge ordered the young woman to a residential treatment placement, which she liked very much. She finished high school there.

Nevertheless, there was an accumulation of 'traumatic events' and 'chronic, prolonged trauma:' her grandmother's death, not having a stable, nurturing caregiver available, not having her loss and grief adequately addressed and little in the way of the secure, loving, gentle treatment that her wounded self so badly needed. She did not know her biological relatives, or have a sense of belonging to her family of origin; even her mother felt like a stranger. This is important to note, as DHS seeks to place children and young people in kinship care in order to maintain family bonds, but it is possible (particularly given large families) that the placements may be with relatives who are effectively unknown to the child, thereby compounding the sense of loss and abandonment and profound grief. The fighting and lack of control, thus, can be related to a consequence of her traumatic background. One woman remembered:

[I was] dealing all the time with all of the emotions and things and going through puberty and all of that at once. Thinking about when I was a child, just a lot of things that made me angry, things I never dealt with (RP 20).

It is important to realise that these young women not only need care and nurturing, but also the empathetic concern from a caregiver such as an aunt or grandmother who can teach and love them as they were developing into young women during their teenage years. Another participant also described how she moved back with her mother when she was about 14 years old because her primary caregiver, her great-grandmother, “was getting real sick, uh she was like [elderly]” and thus, could not take care of her (RP 31). Upon returning to her mother, she recalled: “that’s when I started getting in trouble, cuz my mom didn’t care” and “that’s when I get locked up.”

Another young woman began getting into serious trouble when, after several years of living with her aunt, she was returned to her mother (RP 7). It was a disastrous move because her mother was now a stranger to her and it disrupted her strongest human attachment. She shared: “I always went to school when I lived with my aunt, my mom, she didn’t care if we went, got up and went to school or not.” Consequently, she started getting suspensions at high school, was expelled, failed to finish high school and became a deep end offender with convictions for assault and selling drugs (RP 7). In these situations this may occur without there having been an ongoing human attachment and bond between the mother (or other primary caregiver) and the child for a considerable time. Adjustment to the home setting can then be complicated and the transition to living with someone who feels like a stranger may be so rough that some young women end up entering the juvenile delinquent systems, further contributing to their overrepresentation. Instead, DHS social workers and professionals could have forged relationships in order to establish an ongoing human connection with the girls and young women. These relationships could encourage them to air their views so the professionals understand and account for family reunification as a viable option, as opposed to returning them home and potentially creating emotional damage in their lives.

7.13 Lashing Out or Acting Out in Response to Systemic Failures Sense of Loss and Abandonment Results in Confusion, Anger, Aggression and Violence

There are many reasons why young women get angry, aggressive or violent. The stories of many of the women suggested a strong link to trauma, often the traumatic event which precipitated their entry into the systems. We have also seen that compounded trauma, sometimes during involvement in the systems, can be a significant contributory factor. The young women interviewed made several poignant points pertaining to the underlying reasons. One participant described how “you never know what they [the young women] going through inside or how they feeling” and “they could be going through stuff at home and that could make them want to fight because the anger they have inside of them be like, it just come out at the wrong time” (RP 14). It is possible that the accumulation of painful feelings resulting from a profound sense of loss or abandonment could translate into anger and rage as a means of venting frustration and deep disappointment and feeling let down by life. RP 14 referred to a friend who would fight as a result of anger about her family circumstances:

One of my friends that I used to talk to like was going through a lot because her mom was like putting her boyfriend before her kids and like she would fight all the time, like anything. If somebody looked at her wrong, she would just curse at them, and be like ‘what the f--- you looking at? You want me to punch you in your face?’ So like she was always getting suspended (RP 14).

It is evident from the research that the young women could be emotionally upset and angry as a result of child abuse and/or neglect and that they need to have a safe adult available who can address what happened in an emotionally secure environment. It is also important that the perpetrator, who may continue to have a presence in their lives, be appropriately dealt with. One participant described what might happen without this:

[...] it gotta be either/or they’re being neglected or somebody did something to them in their childhood and they don’t want to speak of it. They don’t want to talk about it and they just cradle everything in and they just put it in a bottle. You can’t put everything in a bottle, you can’t keep it shelled in because the next thing you know, you be walking around here like ‘I’m going to kill somebody,’ you can’t do that (RP 3).

Likewise, the young women might use physical violence to cope with their problems and take out their frustrations and anger on other people who have similar problems. The chronic state of agitation resulting from living without sufficient attention being paid to one's welfare, and having a sense of belonging to a nurturing adult caregiver may be a basis of volatile, explosive behaviour. This may be compounded by the experience of profound loss and abandonment at a young age by a primary caregiver. Moreover, the systemic responses may not meet their pain and suffering with tailored interventions and services that address the whole child and not just her 'behaviour.' As we have seen, it is essential to provide the child or young person with information so she can meaningfully participate and contribute to the creation of a reality where she feels nurtured, cared for and supported (also in conformity with Article 12 and 13 of the CRC). From reviewing the experiences shared by the research participants, it does not appear that in the majority of cases, suitable therapeutic interventions and services fully addressed her needs and safety, much less contributed to nurturing her and keeping her emotional life secure.

7.14 Systemic Responses: Rebuilding Sense of Family? Is Stability Restored? Foster Care, Multiple Placements and Institutions

Of the young women interviewed, twenty had experienced living in a foster care placement. In some instances, they reported having felt content and part of the family, especially those in kinship care with relatives. One participant described how her aunt took care of her and her siblings like a "little family" (RP 17). She described herself as having had a good childhood and a good relationship with her social worker. Another participant described how DHS placed her with a foster parent for seven years who then became her permanent legal custodian and with whom she continues to reside. They have a loving relationship and can discuss "anything." She stated:

It is a good experience with her even though she's old, she still mobile, she taught me everything I know about living and taking care of myself and you know, like things female goes through like far as my period and stuff like that...

I love her like she always kept a warm bed, food on my plate, you know some something for me to wear, kept me in school, you know always

motivated me, you know every time I like clean up around the house, she give me money or buy me or take me out to eat and stuff like that. She actually treated me nice (RP 29).

These placements can, however, mean living with strangers which girls and young women are often afraid of. Already traumatised, they find themselves without a familiar carer, unsure of what is happening to them or what the future holds. Their anxiety and sense of alienation can be compounded if a foster parent observably favours her own children. RP 5 gave an example of this, recalling her foster mother purchasing branded clothing for her child and sending her to private school but not doing so for the foster care children. Another participant felt that she was treated poorly by her foster mother:

...they just be collecting a check, they didn't care about nothing from you was doing, they didn't care about buying our clothes or hygienes or nothing like that, it was just all about the check at the end of the day (RP 27).

Another woman recalled the foster parent allowing her own children to treat the foster care children in an uncaring, selfish and abusive manner:

[She should have] treated me as I was one of hers, the same kinda caring, love and passion she had for her children, she didn't have for me and she had four children, and they treated me so wrong. Like I would go on visits with my mom and my mom would like give me money and stuff and would come back, her kids would make me pay for food when she was getting a check for me (RP 24).

Such placements can dismantle children's already fragile emotional lives. Children who have experienced the trauma of being removed from their families and the often serious underlying issues need to feel safe and cared for by a strong, dependable adult as they grow up. This is even more crucial for girls and young women who have experienced child abuse and/neglect; they need a foster care parent who is understanding, empathetic and supportive in addressing their trauma. Where this does not happen, placements can feel more like punishment. The injustice of this can cause the girls to 'act out,' sometimes leading to delinquent acts and further interface with the systems. This is especially the case when the DHS worker does not take the time to have private conversations where they can express their thoughts and

feelings, and the issues go unheeded and unaddressed, resulting in chronic, prolonged emotional (and sometimes physical) trauma and suffering.

7.15 Multiple Placements

It is particularly detrimental to children and young people when they are moved from one placement to another, therefore failing to establish stable, predictable routines and a human connection with a nurturing, responsible caregiver. One participant stated:

I just felt like nobody wanted me. My brothers, they got placed in a foster home in the city, not Philly, and I was stuck floating and floating and just going from foster home to foster home to... Know I got stuck, first I got stuck going from placement to placement... Me, I always was a run risk cuz I didn't care. You not going to keep putting me in this place and that place and this place... and I got to get to know a whole bunch of people, a whole different group of people that raised me (RP 18).

Whilst it is right that a child be removed from a placement if it is not best suited to her, there are inevitably ramifications. As RP 18 attested, the children really feel the lack of secure, stable, predictable, nurturing care. It is crucial that young women have a strong sense of belonging; without this, trauma can be compounded and self-esteem and confidence can potentially plummet. A number of young women described how frequent moves meant that they had no roots in any one location, were constantly with strangers, “in and out” of different environments and unsure as to what the future held (RP 3, RP 24, RP 29).

The reality of their experiences can skew the aims of the child welfare system to protect them and support their growth and development. Instead, girls and young women can feel like a number in the system, to be tracked monitored and supervised according to administrative and legal requirements. The young women's lived experiences ranged from beneficial to deeply traumatic, depending on how social services and rehabilitation interventions were prioritised over tracking and monitoring administrative requirements. As we have seen, the child who is troubled may experience further maltreatment in placement. It is crucial again that social workers have ongoing private conversations, whereby the girls and young women

can provide details, contribute to decision making and overall, have an active role in identifying and maintaining a suitable out-of-home placement with the aim to prevent difficulties and timely address them if they occur.

7.16 Congregate Care, Residential Treatment and Juvenile Delinquent Facilities

Whilst DHS in Philadelphia seeks to reduce the number of congregate care, residential treatment and juvenile delinquent placements, there were instances in both the child welfare and juvenile delinquent systems where the young women felt they benefitted from them. Overall, there was a range of experiences in group homes, residential treatment and/or secure detention facilities. These can be difficult experiences due to institutional rules, social norms, very high levels of supervision and monitoring and in some cases locations far from Philadelphia. One participant with a history of aggravated assaults, expulsion from school and truancy, however, was very positive about her residential treatment placement (RP 20). Despite having engaged in serious violence and being involved in the juvenile delinquent system, it was the social services interventions, engagement and placement that worked for her and improved her life; she was placed for several months at a residential treatment facility (RTF).

This participant liked the routine at her RTF; it gave her a sense of stability, predictability and safety along with opportunities she did not have whilst living in a highly deprived urban area in Philadelphia. She stated that she “really liked that place” and referred to it as being like “a boarding house for girls.” The routine worked for her and she benefitted from getting up at a certain time, having home cooked meals, going to school and “living in a house like a mansion.” She also liked the recreational activities such as movie night, going to parks, baseball and football games and being part of an outdoor club. High levels of interaction, human connection and positive treatment, along with a stabilising, predictable routine, provided her with a sense of emotional safety and security. Another participant described how she fared well in a highly regimented placement in the juvenile delinquent system, even though the placement was ‘lock down.’ She was able to earn qualifications and learn life skills such as first aid (RP 31). Their experiences

showed that both the child welfare and juvenile delinquent placements can have positive effects. The women understood the placements to be focused on their growth and development. This was achieved by defining and organising their lives according to a very structured day with meal times, school, therapy and programs. They described how the focus on their welfare and routines improved their lives before returning to Philadelphia.

For other women, the experience of such placements was less positive. In these cases the women were less aware of the aims of supervision, treatment and rehabilitation, seeing the discipline of the facilities more as a punishment, rather than a means of achieving these aims. One young woman was challenged by learning disabilities and emotional and mental health issues, and she experienced multiple placements. During one placement she was pregnant (RP 7). She described how juvenile detention staff focused on supervising and monitoring ‘acting out’ and ‘behaviour’ in order to keep discipline and order:

It’s strict, aint nothing in there, they send you farther out, it’s stricter, like you can’t really do nothing, like you can’t go outside, you probably get like one phone call a day and you can’t really do nothing in a stricter facility (RP 7).

On reaching 18, this participant was transferred to an adult correctional facility for women, which she described as “they sent me to the big jail.” The implication here was that she regarded her juvenile delinquent placement as a “small jail.” Certainly she found it a disturbing and traumatic experience, particularly being prevented from seeing her baby son (RP 7). One participant also described one of her juvenile delinquent placements as being “like a boot camp” (RP 31). They went to school and “did boot camp things like push ups and crunches and running and work out and stuff.” She later entered a juvenile delinquent placement with a higher level of supervision and lock down, describing the routine as:

Um we went to school, when we come from school, we go into our rooms, we get called up for the bathroom, we go back into our rooms, come out for groups, um go in our rooms, line up for the dinner, go to dinner, go back in our rooms, um go to gym, have gym, go back in our rooms, then by the time we come back it will be time for the showers, then the nurse come on the unit, then we do group and go to bed (RP 31).

Nevertheless, this participant benefitted from the routine and strict supervision in a juvenile delinquent placement, acknowledging that it had improved her life and enabled her to earn qualifications and certificates.

A child welfare placement can also sometimes become reminiscent of this type of juvenile delinquent placement. In situations where, for example, there is constant fighting among the young women, the focus of the staff inevitably moves to supervision and monitoring in an attempt to maintain order, as opposed to using a participatory model to establish and maintain ongoing relationships (RP 18). The reality of ‘messy boundaries’ then, is that regardless of which system she is involved in, it can be a matter of chance whether a young woman experiences a therapeutic mixture of care and/or discipline. It was clear from the research that high quality residential treatment, with a daily routine and focused attention, was beneficial to some young women, improving their life chances and in the long term, potentially reducing their presence in the child welfare and juvenile delinquent systems.

7.17 Conclusion

Whilst academic literature focuses on how court functions and processes and multi-system collaboration can meet the needs of a child who ‘fluctuates’ between the child welfare and juvenile delinquent systems, the legal approach means it does not necessarily deal specifically with the child’s emotional life and her journey through the systems.³⁹ In-depth, qualitative interviews with young African American women, however, yielded life narratives which provided the basis for an exploration of statutory law and how the exercise of discretion can impact the emotional life of a child (and continue to influence adult life). The empirical research shows that these young women have complex, nuanced histories and an emotional life that needs individual attention in order to provide tailored interventions and services, regardless of which system they are involved in. It was also very clear that removal from the home, out-of-home placements and the manner of case processing can seriously

³⁹ The Georgetown Center for Juvenile Justice Reform is one of the leading organizations that focuses on young people with involvement in both systems on these terms, particularly seeking to address their routes from the child welfare to the juvenile delinquent systems. Their website is as follows: <http://cjjr.georgetown.edu/>

complicate situations, leading to greater involvement within the systems, unless handled by trained, compassionate personnel.

The research shows that significant loss arising from parental failure, the illness or death of a caregiver, exposure to violence and other traumatic events, emotionally damage young women regardless of their experiences in the systems. However, 'traumatic events' and 'prolonged, chronic trauma,' can too easily be compounded by inappropriate systemic responses. As we have seen, there were several instances where the systems made mistakes and inappropriate decisions, or appeared to focus on tracking and monitoring, rather than meeting the young women's needs for compassion and empathy. In too many cases, the lack of adults with sustained commitment to the young women on a consistent, regular basis, meant that they did not receive the stability, predictability and nurturing that they needed. The empirical research shows that empathetic ongoing personal attention to their emotional needs and the details of their lives helps young women to deal with shock, loss, grief, bereavement and despair. They are then able to move towards recovery, forging and maintaining meaningful human connections and attachments in their relationships. Helping girls and young women to understand the process and to feel that their voices are heard would in many cases potentially reduce fear, frustration and anger, making it less likely that they will 'act out' and ultimately perhaps reducing the duration of their presence and involvement in the systems.

Where young women continued to feel a sense of loss and abandonment, the research showed that there was a significant tendency towards anger, aggression and violence. In order to work effectively, it is clear that the systems must acknowledge the young women's emotional lives, implement effective interventions and appropriate services and employ personnel who show compassion and empathy as well as provide clear boundaries and thoughtful, fair discipline. In fact, DHS did improve the girls' and young women's situations when the department placed them with a caring relative or close friend in kinship care or provided social services with a worker who forged a trustworthy, supportive relationship with them. Likewise, the young women interviewed typically adjusted to major changes in their lives and adapted to new living arrangements when they stayed in one place with at least one nurturing, caring adult over several years. They also opened up to the social workers,

particularly when they proved reliable in not upsetting their lives, and further when they proved effective and thoughtful in a crisis in which adult attention was requisite to changing the circumstances (e.g., when the young woman described a teacher harassing her and the social worker transferred her to another school).

The next chapter focuses on how the system might improve when the young women have the requisite opportunities to discuss their lived experiences and the nature of their participation (if any at all) when involved with the child welfare and juvenile delinquent systems. This chapter considers children's participation rights under the international children's rights treaty (the United Nations Convention on the Rights of the Child). In considering these participation rights, an approach and framework is offered to address a child-rights based approach (as opposed to a parents' rights-based approach in the USA). Based upon the child rights—based approach, this chapter further explores child participation rights under Article 12 of the CRC and its interpretation in the Committee on the Rights of the Child, General Comment 12. This chapter further focuses on the 'conceptualisation' of these participation rights on the basis of specific models of participation, particularly as set forth by Professor Laura Lundy (Lundy, 2007). In this way, the empirical analysis gives focus to her model and how girls and young women involved in these systems should be encouraged to express their views freely in a safe 'space,' have their views taken seriously and then given 'due weight,' and ultimately, receive feedback about final decisions and how their views were taken into account and reasons why the decisions were made.

CHAPTER 8:

The Walk of Shame: Exploring Young African American Women's Views and Participation Rights in the Child Welfare and Juvenile Delinquent Systems in the USA

It is important to consider the young African American women's interviews in relation to children's participation in the child welfare and juvenile delinquent systems, as they offer valuable opinions and experiences. Scholars have written widely in this area, particularly discussing participation rights in terms of Article 12 of the CRC. Article 12 serves as a comprehensive, universal frame of reference for understanding the need for children's participation rights in the United States, despite the USA's failure to ratify the treaty. The CRC regards children as rights-bearers and autonomous persons, which are distinct from parental rights whereby direct control is generally permitted over children's lives until they reach adulthood (Dailey, 2011). Further, Article 12, General Comment 12 and Lundy's model provide in-depth understanding about how children have a right to freely express their views and have them given 'due weight' in decision making with feedback about final decisions. The research participants' interviews, however, overwhelmingly showed the research participants experienced minimal or a complete lack of participation when involved with the child welfare and juvenile delinquent systems. In many circumstances the young African American women described their reliance on adult proxies, feeling that adult opinions had overridden their views and that the adults in question often lacked the confidence to trust their opinions.

8.1 The Role of Adult Authority—Parents and Agents of the State

This study sought to question the role of parents and agents of the state (such as social workers, probation officers, law enforcement agents, attorneys, judges), the matters they were discussing and with whom they were conversing during decision making processes. The young women described their relationships with their parents and these agents of the state, and instances where they felt ineligible to challenge parental or state authority in decision making, to ask for justification or to insist that

adults as duty bearers have obligations to them to account for their power and decision making (Freeman, 1983; 54-62; Tobin, 2013; 409). These young women prodigiously criticised adults who assumed authority for making decisions regardless of whether the child or young person was involved in the child welfare and/or juvenile delinquent systems.

As discussed in Chapter 6, the young women perceived adults working in the systems to be overly focused on procedures and bureaucracy. Similar criticisms were aired when they were asked about their participation during involvement in the systems. They felt that the agents of the state were too focused on legal and administrative requirements. Many of the participants recalled how adults had used their discretionary powers to dominate and sometimes wholly exclude them from decision making. Amongst the many distressing accounts, it is also important to note there were some young women who had more positive experiences and felt that there were professionals they had encountered who actively listened to them, took them seriously, respected them and ultimately acted effectively and with sensitivity on their behalf. All of their accounts are explored in this chapter, particularly in light of Article 12, General Comment 12 and Lundy's model. Ultimately, they show that young women generally were not afforded levels of participation commensurate with international children's rights standards and Lundy's model of participation.

8.2 Lundy's Model—'Space' as a Prerequisite to the Right to Freely Express Views

The DHS social workers and other professionals generally did not provide an 'environment' or 'space' for the young African American women when they were involved in the systems, much less a guaranteed one, where they felt safe to freely express their views on an ongoing basis in decision making (General Comment 12; Lundy, 2007). Foremost, this 'space' is critical to ensure safety for the girls or young women where they can instantly get in contact with a social worker to provide information about problems, including abuse and/or neglect. Specifically, the empirical research showed that it was not unheard of for children to experience difficulties in out-of-home placements. Given that the girls and young women are already emotionally vulnerable, it is particularly important that everything possible

be done to avoid the potential for any further harm and trauma in their lives. There were participants who made it explicitly clear that they needed a physical 'space' where they could also talk privately in order to freely express their views and consult on matters affecting them. One participant felt she had to sneak to secure privacy to openly discuss her situation with the social worker, which ultimately led to her remaining in the same placement where she was exploited (RP 24). She stated:

so I would sneak and use the phone and call her and cry, like 'I don't want to be here,' I would act out so she can remove me, but she wind up placing me back with the lady who I didn't like, who kids was charging me for food and stuff like that...(RP 24).

Another participant described what she thought would be good practice (a social worker talking to the child in private at each visit) regretting that in her experience, it had not happened:

They wouldn't even like... you know sometimes, you would have a meeting and you would go out to see the children and you would meet with the parents and then after you meet with them, you pull the child to the side, you know that pretty much see how things was going, you know, they never did that (RP 27).

Consequently, it may require social workers to take many 'proactive' steps to encourage the girls or young women to feel emotionally secure and comfortable in a 'space' where they can open up and freely 'voice' their thoughts and feelings as well as indicate how they would like to participate in decision making without feeling marginalised or excluded (General Comment 12, Lundy, 2007). Further, it was evident that even given an open discussion about her situation in foster care, the social worker may not have seriously taken the participant's views into account. Given General Comment 12 and Lundy's model, the social worker would be accountable for explaining the basis of a final decision for her to remain in this foster home, including giving feedback about this decision and offering redress to challenge the decision (Ibid.).

8.3 Lundy's Model—'Voice' as a Prerequisite to the Right to Freely Express Views

When contemplating providing children and young people with the right to freely express their views, they need a 'voice' in decision making, including when they are involved with the child welfare and juvenile delinquent systems. As a prerequisite, there is a need for the girls and young women to have enough time for 'sufficient understanding' of the issues with child-friendly information in order to freely express their views regardless of age (Lundy, 2007; General Comment 12, para. 21). Thus, the adults must regard these views as worthy and valuable in influencing decision making on an ongoing basis. The parent's rights approach, on the other hand, experienced by most of the research participants, reflects little of having a right to freely express their views and being supported to express them. Some women described instances whereby they were excluded from participation even when present, as discussed in the following sub-sections.

8.3.1 I have No 'Voice' as Adults do the Talking When I am Involved in the Systems

Throughout the research interviews, a strong theme emerged of adults using their discretion and authority to direct the children's lives and journeys through the child welfare and juvenile delinquent systems. Several participants described such an approach as an engrained social norm, despite the fact that decisions were being made which directly affected their lives and destinies; they had learned not to expect having a role to freely express their views, to have their views given 'due weight' and/or to contribute to decision making with feedback as to final decisions (Lundy, 2007). One participant made the statement that "when adults is talking, just don't intervene with that" (RP 28). Another participant explained that the social worker came to see if she was "okay and stuff, but she would talk to my granmom" (RP 16). Another participant described being in court with her mother at the age of 12 or 13 (RP 12). She recalls that whilst her mother was talking in court, "they use to [say], 'take her out of the room'... I was crying and stuff." One young woman outlined how her father had engaged a private attorney who listened to her side of the story, but that her parents predominately managed the relationship (RP 29). The young women's experiences indicated that authority was accorded to adults in a way that

reflected a parents' rights approach, rather one that encouraged the child to freely express herself and have a role interacting with the agents of the state in decision making ('space,' 'voice').

8.3.2 I have No 'Voice'—I'm too Young to Express My Views to DHS

The research showed that some participants felt unable to have a 'voice' and participate as a result of their young age. RP 28 stated: "when I was younger, it was you know 'be quiet, you're a kid, and you don't talk to grown people and that's why I think that I went through a lot of stuff.'" Her response implied that she did not have anyone to talk to in order to help her deal with her experiences. In hindsight, she recognised that this was detrimental and led to more difficult personal struggles from a young age. Another participant also realised that her lack of participation meant she did not have a real understanding of her family. Speaking of the social workers, she said:

They just basically tried to comfort me, make me relaxed in that home and stuff like that. I feel like now, back then they shouldn't have did that, because now I'm like clueless about what happened to my mom and stuff like that (RP 29).

Another participant shared how, as a child, she felt ineligible to participate because she was too young. She "really didn't speak" and recalled the adults as doing the talking (RP 23). She felt the social workers did not represent her thoughts and feelings, that she "never [had] a say in anything." She suggested that they should have treated her "like a child of their own" and stated clearly: "I would recommend they change their ways" (RP 23). Another participant recalled DHS coming to her home when she was aged 6 or 7 and then staying with a relative of her mother for a long time, "till she could get us back" (RP 15). She felt that at 6 or 7, she had been too young to understand much of the situation with DHS.

These participants did not consider themselves as eligible to participate because of their young age and never having been encouraged to think differently by the adults around them. Article 12, General Comment 12 and Lundy's model make it clear however that as rights-bearers, children do have a right to freely express themselves

from the very earliest age regardless of their maturity (Articles 2, 5, 12, General Comment 12, para. 21; Lundy, 2007; Tisdall, 2015; 186). There is also no age threshold for determining who has a ‘voice;’ adults are obliged to encourage children to participate in decision making, which was absent from the decision making processes described here (General Comment 12, para. 21; Lundy, 2007). For children to have a ‘voice,’ moreover, adults must ensure they have access to child-friendly information in order to be informed persons and therefore, be prepared to freely express their views (General Comment 12; Lundy, 2007; Teamey and Hinton; 24).

General Comment 12 holds that: (1) adults must “ensure the child receives all necessary information and advice to make a decision in her best interests” (including if she decides not to participate) and (2) they must be “informed about the matters, options and possible decisions to be taken and their consequences”—Lundy’s model aligns with this interpretation of Article 12 (General Comment 12, para. 16; Lundy, 2007). Lundy’s model confirms that children must be prepared with child-friendly, age-appropriate information in order to decide whether to participate and have access to information, such as generally described in Article 13 (Lundy, 2007). Article 13 also undergirds this right to participate by giving the right to ‘seek, receive and impart information’ as a component of realising the right to freely express oneself (Article 13). When the available information is not given to a child, or it is not presented in an age-appropriate and child-friendly manner, moreover, children may not have or even understand that they are accorded a role in it such as demonstrated by the shared experiences among the research participants. The participants did not perceive themselves as eligible to participate despite their young age and they did not perceive having a right to ask for information, much less a conversation in order to contribute to decision making.

8.3.3 I have No ‘Voice’—Adults Do Not Believe Me

Some of the research participants described the agents of the state as being unsupportive of them, sometimes even oppositional. They felt that if they did have the chance to express themselves, they were not listened to, or not believed, with the adult instead relying on his or her own ‘professional’ judgment when making

decisions. In complete contrast to the approach of the CRC, General Comment 12 and Lundy's model, one participant described not only having felt that she was being dismissed, but that her views were disregarded as untruthful. As she learned to expect adults to discredit and distrust her views, so she became less likely express her feelings and thoughts. She stated:

[...] they [the system] don't believe children most of the time. They always believe the person that is in charge, which is the parents and stuff like that, so my word never came into play, my word never mattered... Meaning that whatever I said was a lie, you know what I mean, this, this was what they were not doing to me, this was what I was doing, all the behaviour was because I wanted to do it, you know what I mean, you, I was acting out because of the fact they was treating me a certain way (RP 23).

Another participant stated that her foster parent did not believe her or listen and she felt characterised as 'trouble':

I just got a foster parent you know, they don't really listen to say what's, what's true you know... They don't believe you or anything, you been in different foster homes, they think you be trouble and them, they don't really listen, so I felt comfortable and I didn't, didn't want to adapt to society out in foster home (RP 27).

These experiences demonstrated the realities of children not having a 'voice.' Not only were they not freely expressing their views, but the consequences of having their views persistently disregarded or being disbelieved could be far reaching. Depending on their personality and/or their everyday world, girls and young women may feel a sense of betrayal and loss or fail to develop self-confidence; they may also learn to distrust, resent, fear or harbour anger towards adults. All of this can lead to 'behaviours' which may extend their time in the systems; in some instances, they could also be left vulnerable to harrowing experiences. The young women may feel a lack of control in their lives without a 'voice' given how DHS and/or the juvenile delinquent system respond to them, including how they address their trauma. The systemic responses could potentially lead to further trauma and negative behaviours from frustration and anger where their 'voice' is discredited when tailoring interventions and services to meet their needs. On the other hand, having a 'voice' might help young women to recognise the importance of their own role in decision

making processes, and thus take responsibility for achieving goals which are so vital for discharge from the child welfare and/or juvenile delinquent systems.

8.3.4 I have No 'Voice'—There is Abuse and Neglect in the Foster Care Home

There was one research participant who experienced heinous and harrowing sexual abuse by a foster father in an out-of-home placement whereby the DHS social worker failed to detect the abuse and keep her safe (RP 29). In this particular case, the research participant told of how as a small girl, her foster father had molested her for a number of years (RP 29). She reported the sexual abuse to her social worker multiple times but this worker “didn’t really listen” to her (which also refers to this worker not taking her seriously as an ‘audience’ under Lundy’s model and discussed in the next section). Eventually she re-connected with her sibling’s father; on a visit with him, she and her sibling broke down in tears and told him about the abuse. Consequently he ‘snapped’ and took the case to the district attorney who then prosecuted the foster father. In court, the girl went to the judge’s chambers and used a doll to show them where he molested her. The investigation showed he had also molested other foster care children and upon conviction, he received a prison sentence of several years. The social worker who had not listened to or believed the child, particularly by acting effectively to immediately end the abuse and neglect, lost her job.

Whilst a social worker can physically examine a foster or kinship care home and have a conversation with the supervising adult, this worker does not necessarily get the full story unless she or he talks to the child in in-depth, private conversations on a regular basis. A relationship of trust must be built up between the child and the social worker to ensure that the child is comfortable and relaxed enough to freely express her views about living in the home and have ‘space’ and a ‘voice.’ Given that the social worker is charged with protecting the child from abuse and neglect, it is also essential not to solely rely on the foster parent for information and decision making. It is crucial that the child can freely express her views in this way, as conversing only with the foster or kinship parent may further offer a biased account, particularly when assessing the quality of adult supervision, the house rules and the

enforcing of them. As foster carers receive a monthly stipend, there is the potential that some individuals may also be more motivated by financial reward than by a desire to nurture the child in their care. The foster care parent is actually an employee of DHS and thus, should be subject to review like employees. In general, they are caretakers in a relationship with the social worker to provide for the child and her well-being, but DHS is charged to supervise and oversee them regarding issues, problems and/or neglect and abuse—thus, a major reason for having in-depth, private ongoing conversations with the child that provide a ‘safe’ space and an invitation to have a ‘voice’ in the decision making process.

If heeded, Article 12 and Lundy’s model can inform social workers and other professionals in the child welfare and juvenile delinquent systems, helping the girls and young women to feel comfortable and relaxed enough to share intimate details about their lives, and therefore making it much less likely that serious issues such as sexual molestation go unrecognised. It is essential for girls and young women to have a relationship of trust where they can talk about becoming a woman, physical changes, sexual health, relationships, sex, reproduction, birth control and pregnancy, sexuality, STDS and HIV/AIDS. Overall, according to General Comment 12 and Lundy’s model it is the responsibility of social workers and other professionals to initiate and talk about these sensitive topics (‘space’), and this entails regularly listening and encouraging them to freely express their views (‘voice’) as well as being understanding, believing what they have to say and consulting them in advance of making decisions about their lives (‘audience’). The Committee on the Rights of the Child is clear in its urging that ‘special attention’ be paid to the right of a girl to be ‘heard’ and ‘to receive support, if needed’ (General Comment 12, para. 77).

8.4 Lundy’s Model—‘Due Weight,’ ‘Audience’ and ‘Influence’ in Decision Making

Lundy states that the ‘audience’ must ensure that the child’s views are listened to (not just heard), and in reality have an influence on those involved in the decision making process (Lundy, 2007; 936-937). In other words, social workers and other professionals working with children have training on how to be a ‘listener’ so they can effectively learn from the children themselves about their daily lives and engage

them in decision making processes (General Comment 12; Lundy, 2007). In terms of having 'influence,' the girls and young women should be provided with feedback including how their views were taken into account in making final decisions and how best to address any concerns or problems they may have as a consequence (Lundy, 2007; Parkes, 2013; 39). These two requirements are, thus, intended to show that social workers and other professionals must take their views seriously and are accountable to them by providing feedback about how they influenced decision making. Moreover, there is no age threshold for when the girls or young women are considered to be 'mature' in order to attribute 'due weight' to their input in the decision making process under General Comment 12 and Lundy's model. Likewise, these processes are not intended to regard them as tokenistic, manipulative or decorative according to Hart's ladder, when incorporating their views in making decisions and accounting for the results.

8.5 Bureaucracy and Lack of 'Audience' and 'Influence'

As we saw in Chapter 6, several young women perceived the child welfare and juvenile delinquent systems as being overly bureaucratic. A number of them demonstrated this with reference to their experience of participation. The women recognised that it was part of the social workers' job to come to the home and check that they were safe and that their basic needs were being met. Several participants commented on this administrative requirement⁴⁰ and how it had an impact on their lives. When talking about adults taking control of decision making, the women frequently referred to the social workers who made these home visits. The consensus was generally that social workers were primarily focused on complying with the duties of their job, namely, satisfying administrative requirements and not taking time to talk with them and give 'due weight' to their views in decision making.⁴¹

⁴⁰ The new DHS guidelines effective from 31 October 2014 provide for the administrative requirements to ensure the child's basic needs and safety are met, partly by social workers conducting home visits (Community Umbrella Agency Guidelines).

⁴¹ Under the new DHS guidelines, for instance, there are highly specific social work tasks for assessing the home for 'safety threats' in order to ensure that children involved with the DHS are safe in their physical environment and that their basic needs are met (CUA Guidelines). These guidelines appear to be lacking in depth about having full, private ongoing discussions with the child about their situation(s).

Moreover, it was clear that the idea of the social worker's role (including a requirement to take their views into account) had not even occurred to some of the participants as set forth under General Comment 12 and Lundy's model. One woman, for example, characterised the DHS social worker's job as checking the house: "Yeah, that's what they supposed [to do], they get paid, make sure things alright in the home" (RP 15). Another participant said of the social workers:

They was just going by what was on the paper. What was on the paper? It's an assignment where you got to come out and they got to write if you safe in the household, do you want to move, do you want to leave, simple questions (RP 5).

Her perception was that the role of the social worker as focused on paperwork, and assessing the house. Although she did speak of the social worker asking her questions, it is important to note that even when these questions dealt with such serious matters as moving or leaving a placement, the way they were experienced by the young woman was almost as a check list, rather than wide ranging dialogue where they were encouraged to participate in decision making ('space,' 'voice'). Another participant had similar experiences when DHS implemented in-home supervision whilst she was living with her mother:

They wanted to see that we had food and stuff and they talked to us, asked little things, I don't remember... I remember them asking us about food, asking my mom about food, look in our refrigerator and stuff, came upstairs and stuff like that (RP 12).

Another woman stressed her opinion that paperwork had been the focus of the social worker's visits, not talking to her, much less listening to her about her placement. She pointed out how social workers prioritised paperwork over dialogue, which overall could discourage speaking up and considering their thoughts and feelings as valuable in decision making about their lives (RP 3). She stated:

Paperwork is more important instead of listening to a child that actually knows what she saying and who she wants to stay with. The paperwork not going to talk back to you, paperwork is just paperwork, a child going to talk back to you (RP 3).

Other participants recognised that social workers were obligated to satisfy these requirements, but also did not consider the role to include building relationships with young women and taking their views into account when making decisions regarding their lives. One woman described how her foster care family would put on a big front when the people from the agency visited:

The foster care agency people, they would come out sometimes, course when they came out it was this big front, you know like everyone's happy, put on your best clothes... You know, everyone sitting down like a family, like everything was alright, like of course no one is going to tell you at the end of the day that they're being mean or mistreating the children... (RP 27).

Some of the young women also experienced barriers to expressing their views because they felt obliged to tell social workers what they thought they wanted to hear:

Um I didn't feel as though I could be completely honest because at the end of the day, I feel as though you still worked in the system with them so there was certain stuff I could tell you and certain stuff I really couldn't tell you, I pretty much tell her what she want to hear because I felt as though she still worked in the system (RP 27).

The accounts of the young women indicated that there were social workers who were too reliant on using administrative mechanisms in order to keep track of them and their safety, rather than taking an active interest in their lives, supporting them as they grew up and, moreover, giving 'due weight' to their views in decision making. Based upon the participants' interviews, the young women generally characterised the social workers as regarding their cases in terms of 'basic needs' and 'safety' where they observed the house and/or had conversations with an adult.

Whereas social workers are trained to assess cases in a particular manner and there are specific evidence-based practices for satisfying administrative requirements, the participants' experiences showed they did not provide 'space' to encourage them to participate and have a 'voice,' moreover, to give 'due weight' to them as human beings with a need for tailored interventions and services regardless of involvement in the child welfare and/or juvenile delinquent systems (particularly as they may be experiences emotional suffering and pain related to their trauma). From a cynical perspective, the social workers may monitor their 'families' in this way to maintain

control over the caseload and avoid missing a child or having a child fatality due to abuse and/or neglect connected to the child welfare and juvenile delinquent systems.

In addition, social workers can use administrative lingo to characterise the life stories of the girls and young women when testifying before the court. Social workers may further also be guided by satisfying legal requirements which dictate specific answers to judicial questions, which can thus override describing the girls' and young women's lived experiences in favour of focusing on their paperwork. In this way, the social workers are focused on identifying 'safety' threats or failures to provide 'basic needs' in the home, rather than making 'space' for the girls and young women to feel encouraged to freely express their 'voices' according to General Comment 12 and Lundy's model. It is important to note that without this information, the social workers also can miss abuse or neglect if they are solely relying on physically observing the home and not taking time for ongoing, extended conversations with the girls and young women to uncover seemingly invisible problems such as chronic sexual abuse in the foster care home.

As mentioned, many of the young women were living in poverty and struggling with intensely difficult situations growing up and felt "set apart from mainstream society and severely limited in their opportunities" (Ray, 2010; 65). Where the girls and young women most likely need to express their views freely and have them given 'due weight' in decision making, their chances for undivided personal attention with social workers can be diminished even though they desperately need it. The girls and young women are developing their sense of identity, trying to find meaning in their lives, wanting to describe their realities and contribute to decision making. As discussed in the next sections, perhaps if the girls and young women have the option to appear before the court and inform the judge about their lives, then social workers and other professionals would be more inclined to take them seriously and give 'due weight' to their views in decision making. Judges can hold social workers and other professionals accountable as an 'audience' who takes them seriously, has them

participate in decision making and account for decisions after hearing from the girls and young women when setting forth court orders (Lundy, 2007).⁴²

8.6 Child Welfare and Juvenile Delinquent Court Proceedings

Whilst the young African American women involved in this study had legal status as a party in administrative and/or judicial proceedings for the child welfare and juvenile delinquent systems, in many cases they did not have an opportunity to be heard directly or indirectly through a 'representative or an appropriate body' (Article 12(2)). The lived experiences described by young women contributing to this study generally reflected a parents rights-based approach of the United States, rather than a child rights-based approach incorporated in the CRC. The empirical research showed how the role of the parent (or agent of the state) eclipsed the role of the child, allowing only minimal participation on the child's part, and in some cases, none at all, even when the child was present at court proceedings. For purposes of understanding the role of girls and young women when involved in these systems, General Comment 12 and Lundy's model (*space, voice, audience, influence*) inform whether they considered having an 'opportunity to be heard' during their involvement in the child welfare and juvenile delinquent systems (General Comment 12; Lundy, 2007).

8.7 General Comment 12 and Lundy's Model: Little or No Space, Voice, Audience or Influence

Under the Juvenile Act in Pennsylvania, there is considerable leeway for attorneys who represent the African American girls and young women to control their level of participation in judicial or administrative proceedings; however, adults cannot opt out from including them in decision making processes under General Comment 12 and Lundy's model (Lundy, 2007; General Comment 12). The empirical research showed mainly that the young women did not expect an attorney to be there

⁴² It is noteworthy that there are academic studies regarding youth participation in the child welfare systems in the USA, which engage young people as participants, for purposes of generally informing how adult supports can improve their lives (Del Quest, et al, 2012; 1604). Nevertheless, these type of studies tend to 'document' the 'voices' of young people, rather than concretely set forth a model such as Lundy's model that regards children and young people's 'voices' as guaranteed rights in ongoing decision making processes about their lives as set forth in Article 12 and General Comment 12.

exclusively to hear their freely expressed views and give them 'due weight' in decision making, as well as take them seriously and account for decisions (particularly regarding court orders). The empirical research showed that there were research participants who did not actually know their child advocate attorneys, did not attend court proceedings and thus, did not have the opportunity to be heard and participate in decision making before the court. Moreover, these young African American women did not generally understand the nature of a client-directed relationship and how a child advocate attorney is intended to represent 'best interests' and the 'child's wishes' to the court pursuant to the Juvenile Act in Pennsylvania.

The empirical research, however, indicated very limited communication and rapport between the participant as a client and her attorney and further, not meeting most times before court and providing her with child-friendly information ('space') in order to hear her 'voice' (Lundy, 2007). This lack of communication meant that the young women were unable to obtain information necessary to 'sufficiently understand' the matters before appearing in court ('space') and freely provide their views if they choose to testify and/or speak with the judge in chambers, particularly to inform 'best interests' (General Comment 12; Lundy, 2007). It should also be noted there are multiple parties, witnesses, attorneys and other persons involved in court proceedings and they may conflict over what constitutes 'best interests,' when the girl or young woman is the only one who fully knows about the nature of her lived experiences. Overall, these circumstances could potentially have a bearing on their routes taken through the systems and ultimately, on the overrepresentation of African American girls and young women in those systems (especially if the judge is not entirely apprised by them about their sides of the story). From their perspectives, it may also be easier to comply with court orders if the girls or young women feel included and valued as participants in ongoing decision making processes such as when a judge takes their views seriously ('audience') and accounts for them including explaining court orders ('influence')(General Comment 12; Lundy, 2007).

Like the child welfare system, the juvenile delinquent system is also designed to provide girls and young women with the assistance of legal counsel in order to understand all stages of the juvenile justice process (including the pre-trial stage) and

to ensure they have 'space' and 'voice' to effectively participate in judicial or administrative proceedings (General Comment 10, para. 23(c); Lundy, 2007). In order to achieve these aims, uphold due process protections for a fair trial and build an effective defence, the girls and young woman need client-directed relationships with attorneys who specialized in handling juvenile justice cases. When the young African American women described their experiences with public defenders in the juvenile delinquent system, however, their accounts tended to suggest that they were generally not kept informed, did not have their due process rights explained before the court hearing and thus, did not have a safe 'space' to freely express their views ('voice'). Similarly, they also described not having a chance to air their side of the story or having it given short shrift before the court hearing, which thus dismissed or diminished having their views given 'due weight' in the process. In many such cases, the young women met their attorney for the first time at the juvenile detention facility and/or in court, as discussed in the next sections of this chapter.

8.7.1 I Did Not Appear in Court; Adults Did It for Me (Proxy)

There were instances when the research participants described having an adult appear on their behalf in a case, instead of the girl or young woman having the opportunity to be heard before the court. The empirical research showed how one woman believed that her foster mother had the responsibility to appear in court on her behalf, whereas in fact, this person was an employee for child protective services and not an advocate on behalf of the child. This young woman stated, "Yeah, we was in court, like when my mom went to court system, twice we had to go, twice, or three times" (RP 15). When asked if she herself actually went to court, she stated "the person who was taking care of us [went to court]" (RP 15). Another participant recalled she did attend court once but clearly had the impression that her attendance wasn't necessary: "I didn't have to go to court." She believed that because her child advocate came out to see her and handled the case, attendance at court was not necessary. Although it is permissible for an attorney to appear before the court on behalf of a client, in this situation the impression the young woman received was that the appearance of the child advocate attorney was a substitute for her own appearance; she was unaware that she too could attend the hearing and further participate in the process.

This participant indicated that the child advocate visited her probably three times and asked for nominal information about her life and future plans. She recalled: “she just asked me how I felt.” However, this advocate did not necessarily encourage her to freely express her views by creating a ‘safe’ space and making enquiries to understand how she would like to contribute to decision making. The participant did feel her child advocate listened to her side of the story, but at the same time she stated her child advocate “told me what I should do.” Whilst the young woman clearly appreciated the concern of the advocate, the approach fell short of taking her seriously and giving ‘due weight’ to her views in decision making about her life, options and future plans. This limited the extent to which the advocate could then be held accountable for genuinely speaking on her behalf at the court date as this participant was not present to witness the child advocate’s statements or to have her opportunity to be heard by the judge. Consequently, this young woman did not have an opportunity to appear before the judge as an ‘audience’ and potentially hold her attorney accountable for legal representation before him or her (‘influence’) by witnessing his or her advocacy (although transcripts can be secured if necessary such as for appeal of an error at the trial court level).

Whilst there was an ongoing relationship between the participant and the child advocate attorney, moreover, the young woman’s account indicated that she not been introduced to the concept of collaboration with her attorney. This made it difficult to surmise the extent to which her input had an impact on her continued involvement in the systems. It also suggested a lack of training and awareness around the role of a client in the decision making process with her attorney; although the child advocate may have been well-meaning she still appeared to conduct her legal representation within the parental rights approach given her client’s perception about not needing to attend court or having an opportunity to be heard in court. Overall, the participant generally did not know how the attorney was characterising her in court and thus, she was unaware if the attorney’s representations necessarily reflected the nature of her life, much less how she may make a choice in describing her lived experiences to the judge on her own terms.

8.7.2 Adults Tell Me What Happened in Court Afterwards

The young African American women interviewed often described not having sufficient information about the status of their lives whilst involved in the child welfare and juvenile delinquent systems. They described feeling as if they were treated without regard to their status as a party to court proceedings (if even granted party status under state law) and regretted not having an opportunity to talk freely with agents of the state in order to receive concrete information about their families, friends, neighbourhoods and future plans for their lives. One woman explained how she relied on adults involved with her case (not necessarily her attorney) to obtain court information (RP 7). This research participant at times did not attend court, recalling that the woman in charge of the placement “would tell me what was going on” and that her probation officer provided her with information about court. She was not visited by her attorney and the provision of transport allowing her to attend court was unreliable. She reported that on occasion a van would be sent to collect her, but “sometimes they did not always take you down to court.” She did not appear to have, for instance, consistent representation with an attorney who would act as a constant presence in her life, managing her case and keeping her accurately and completely informed including creating a ‘safe’ space to talk so he could hear her freely express her views, as well as ensure she had an opportunity to be heard before the court if choosing to do so and get feedback about final decisions in her life.

8.7.3 I am at Court but Adults Do It for Me

The empirical research showed instances where young women were present in court, but described not being involved, or having minimal involvement in contributing to decision making. This included the relationships with attorneys acting on their behalf in the child welfare and juvenile delinquent systems. Under Article 40(2)(B)(iv) and General Comment 10, para. 23(c)-(d), the girls and young women are guaranteed legal assistance in order to understand each stage of the process (including the pre-stage ones), and the right to meaningfully participate in juvenile delinquent proceedings. One woman described feeling scared, saying nothing and not talking (RP 10). She said a child advocate attorney was introduced on one occasion, but she

had no opportunity to get to know her or talk to her: “I heard of her, I just, I wasn’t the talking kind of kid, so I didn’t know who they were.” She recalled a DHS worker giving her papers and telling her, “this is your advocate,” but there was no attempt to break through her barriers and engage with her: “I just look down, I didn’t want to be there, I was so used to my mom.” Another research participant stated that after having spent many years in the systems, it was only when she was finally discharged from the child welfare system as a teenager that she had the chance to fully give her views and contribute to decisions about her future (RP 18).

Another research participant did not understand the role of a public defender during a juvenile delinquent proceeding. She had come to court from a juvenile detention centre, knew she had an attorney, but little beyond that: “There is somebody there representing me...” but “...I don’t know because I didn’t meet that person, that person just spoke on my behalf while we was in the court” (RP 24). When asked if the attorney ever sat down with her and explained what was happening, she replied:

No, until afterwards... I never, I never saw that person before until I went to court, they just brought me down into the courtroom, and they said this is the person who is going to be representing you but I know we didn’t pay for an attorney so I’m guessing it was just a public defender or whatever it was (RP 24).

Another research participant described how the public defenders were switched at crucial points during her case:

The public defender, yeah, well I had a different one I got to the Youth Study Center [juvenile detention centre], she wasn’t the same public defender that represented me in the Youth Study Center court room, she was a different one once I got down to family court, she was a different public defender (RP 24).

This lack of consistency was experienced by other women, in some cases leaving them so disconnected from the process that they barely remembered their experiences: “I saw her [the attorney] you know a couple times [at the juvenile detention centre], then it was a dude a handful of times [in the courtroom]” (RP 19). When she went into the courtroom with her attorney, she was “tuning stuff out” as she had “no idea” about the case. She explained that as long as they weren’t sending

her back to her mother; she “didn’t really care” because “I had just been through too much” (RP 19). These circumstances were highly problematic as the young African American woman are appointed counsel in child welfare hearings and have a right to counsel in juvenile delinquent proceedings in Pennsylvania. If counsel is not adequately interacting with them before court dates, privately meeting with them and empowering them to participate (‘space’), and hearing what their views and opinions about decisions (‘voice’), they may not exercise their opportunity to be heard if they are desiring so. Moreover, there may be leeway for trial court errors which could potentially deny them fundamental fairness in judicial decision making if not appearing before the judge to fully apprise him or her about their lives. Further, the young women are vulnerable to deeper penetration into the child welfare and juvenile delinquent systems if judges adjudicate them and issue dispositions without solid legal representation reflecting accurate, complete understanding of their lived experiences.

8.7.4 I Did Not Personally Know My Attorney: There was No Genuine Rapport

The research participants further described a lack of rapport with their attorneys whereby they felt discouraged from freely expressing their view (‘voice’) in a ‘safe’ space. This then meant that the attorneys’ ability to discuss the facts and law of their cases, answer any questions, keep them informed and provide options for concluding the case, were limited. The cursory discussions, lack of consistency and impersonal treatment experienced by the young women in this study, fell far short of fulfilling participation rights afforded by Article 12 and described by General Comment 12 and Lundy’s model. An attorney has a responsibility to engage his or her client in order to understand her life and prepare her for court including having attorney-client privileged meetings (‘space’) where she can confidentially and freely express her views (‘voice’) before the court hearing. These participants, however, were also lacking in information and continuity and did not appear to have a rapport with their attorneys, which could hamper contributing to decision making. Instead, the attorneys generally did not attempt building a trusting relationship and facilitating the young women’s participation so they could feel eligible and valued when exercising their ‘opportunity to be heard’ in judicial or administrative proceedings

(Article 12). The young women described how the handling of their cases left them feeling discouraged, disregarded and lacking a definitive role about whether their views would be given 'due weight' and taken seriously by the court ('audience'), much less accounted for with feedback (particularly court orders).

One participant specifically focused on how her attorney failed to establish an ongoing rapport with her and how this negatively affected the attorney-client relationship and her desire to open up and feel supported:

I feel like they be all for they self at some point in time... because you know, I feel like you supposed to build a rapport with any child or any client you, that you're dealing with.

You supposed to feel comfortable... that I can vent to you and I can explain to you. If not, me being a child, I was going to withhold everything and I'm not going to tell you anything.

That's the same thing with these public defenders, some of them make you feel like why even bother like? Like why even bother explaining myself when you're not showing me that you're for me? You just showing me you're just here to do your job... not that you're really here trying to do your job and help me out at the same time... It's really a big difference to me (RP 24).

Overall, this attorney failed to make a human connection with the client and build a trusting relationship, develop a rapport, take the time to understand her life, show an interest in representing her, explain the nature of the case and assist her in effectively having an opportunity to be heard ('space,' 'voice') and moreover, collaborate with her in developing a compelling defence (RP 30). Further, another participant felt her attorney did not have the specialised training necessary to provide adequate legal representation and was dismissive about her views and thus, her opportunity to be heard. She stated how he failed to listen and take what she said seriously ('audience'):

Yeah, my attorney, act like, he didn't know what he was doing... I was telling him, I already told him everything, so basically I defend myself really... Me! Well, me, me and my mom defended me and everything. She was telling him, like she wouldn't do that and everything else like that and he would say 'well, we're not really trying to hear that' and everything (RP 30).

Another research participant stated how public defenders seeking to advise their clients can be directive, rather than listening to their side of the case, taking them seriously, being an 'audience' and presenting options from which to make a choice regarding her opportunity to be heard. In one case, a young woman explained that she had entered a guilty plea because the public defender told her that her record would be automatically expunged when she reached 18, but this did not happen. She stated:

I didn't feel as she [the public defender] sat down and really listen, and it was more what 'we going to get you,' and 'if you don't take this, you can go to trial, if you like 3-4 years (RP 8).

I was like... well I guess I'll take it then cuz it beats going to jail... and I didn't feel as though she really sat down and explain that, because then when she told me to take the deal, that my record was going to be expunged at 18 and things and I'm looking okay... I'm in juvenile, this my first time being in trouble, my record going to be expunged at 18... They didn't say that it's not expunged... (RP 8).

This participant described meeting her attorney for the first time when she arrived at court on the hearing date. The attorney identified her by calling her name in the waiting room with "all these chairs and benches" and their meeting then took place there, as opposed to a separate room where she may feel safe ('space') to freely express her views ('voice'). Instead, the attorney quickly advised her: "the best thing I can tell you all is to plead guilty." The young woman described the attorney as: "kinda an attorney for anybody," noting that she "didn't buy or pay for an attorney or anybody." The attorney asked her name; then she told her "we gonna have to do this..." This research participant explained she was not able to consult with the attorney who relied on the police report, rather than asking for her version of the case and/or any other relevant information. She felt that she had not been listened to, quoting the attorney as saying: "you gonna have to plead guilty" because "there is no way goin' around this." The participant then shared: "I know I was pissed off while pleading guilty to something I didn't do" and that she was "still mad" when she entered the plea before the judge in court. This type of legal representation was particularly dreadful because this young woman did not regard herself as having committed a delinquent act and thus, the attorney did not pursue the case by listening

to her side of the story and taking it seriously ('audience'); consequently, she entered a guilty plea, which could be regarded as perhaps having amounted to a wrongful adjudication and disposition.

Generally, the young women described a sense of anonymity and lack of connection, including a lack of meaningful engagement whereby they could develop an attorney-client relationship and rely on the continuing services of the same lawyer. Consequently, in many of these cases, the young women did not have the opportunity to be heard and instead felt disregarded. Under Article 12 and Lundy's model, as discussed earlier, the onus is on the adult to provide a conducive 'space' or environment and suitable child-friendly materials for assisting the young women in understanding their case and freely expressing their views. In the cases of RP 8 and RP 27, there was lack of, inattentive and/or insufficient discussion and even disregard prior to the court appearance, much less meaningful discussion about the defence and her life as a whole and/or any mitigating circumstances. In actual fact as to RP 8, the conflict in question arose from an incident occurring because she was pregnant and wore a maternity shirt for school rather than the school uniform. As a young woman who is developing into an adult, she did not fully understand her due process rights and she did not have an attorney who was fully aware of her position based on hearing her side to the story. In other words, she was not encouraged by the attorney to talk about her case in a safe 'space' where the attorney gave her confidence to freely express her views ('voice') and explain her side to the story.

This aforementioned participant was particularly vulnerable and susceptible to the attorney's representation and did not realise that she was entitled to challenge the quality of her legal representation, particularly as she felt ineligible to freely express her views. The attorney did not take her seriously ('audience') and there was no accountability for court orders given that the judge relied on the attorney's representations (she did not speak in court except to enter the plea on the record—although she had an attorney-client privileged relationship). It is also noteworthy that the attorney solely couched an opportunity to be heard as an option to try the case where she may not prevail and thus, could be subject to a harsher disposition in her case. Overall, not only did she need child-friendly information and an encouraging atmosphere to help her understand her case beforehand ('space'), but an attorney

who fully explored her version of the case in order to make informed decisions about presenting her defence to the judge ('voice'). Thus, it is plausible to conclude that she did not have a genuine opportunity to be heard. The lack of this provision meant the juvenile delinquent court judge issued a referral for DHS court-involvement believing her to need social services due to her pregnancy and thus, extending her involvement by routing her into the child welfare system (the delinquent court judge also issued court orders for additional court dates, fines and probation).

8.8 Young Women Who Considered Themselves Able to Participate

Despite these negative experiences discussed, there were some participants who did report having had a rapport with their social worker and being able to have full discussions, although their 'participation' did not rise to the level of involvement as set forth under Article 12, General Comment 12 and Lundy's model. On a basic level, one participant said that she liked her social worker because she took an interest in her, and gave her the impression that she genuinely wanted to know if she was being taken care of. This social worker was personally interested in her well-being, and the participant commented:

she was more into how I was and more about me than herself. Like she actually wondered how I was doing, she actually asked why I had that look on my face... She asked me like you know, was I being taken care of... (RP 29).

A second participant said of her DHS social worker, she "talked to you." This woman clearly felt she was able to approach her social worker if there was a problem, she spoke of being able to have a "full conversation" (RP 22). This positive relationship was fostered by their practice of meeting up for lunch every two weeks over a two year period, and occasionally picking her up from school. These meetings provided her with the 'space' to have one-to-one conversations in a relaxed atmosphere with no set agenda. The social worker took a real interest in her life asking, for instance, about school and her awards. The participant spoke warmly of her, describing her as a mother figure. Crucially, when a serious incident of sexual harassment occurred involving a teacher at school, the young woman felt able to tell this social worker; further, this social worker listened to her, took her seriously and

took action to have her transferred to another school ('audience'). Overall, this young woman felt she had been believed, listened to, taken seriously and respected by her social worker, both in crisis and throughout their relationship ('audience'). She regarded her social worker as effectively responding to a desperate situation in her life including having her transferred to another school ('influence').

A third participant described her social worker being "real genuine and really seemed like she cared" (RP 26). She relayed how the social worker focused on her and how this worker used to "go at it" with her mother, wanting to help her and her siblings. Initially the mother felt the social worker to be "overstepping her grounds," but in time the relationship improved and the participant described the social worker becoming "cool" with her mom. She went on to talk about how the social worker listened to her (and her siblings) and helped them to get clothes that they liked with their DHS stipend ('audience'). This young woman stated, her "granmom would have gotten us some cheap, corny stuff but she [the social worker] like, 'no they like to wear this, they like to wear that.'" Another participant described how even after she returned to her mother, she maintained a relationship with the social worker "because she grew to love me" and the worker and her mom "had a real good bond" (RP 24). She commented how this social worker "would do whatever in her power to make sure things went well." The level of trust that developed between the social workers and participants may well have contributed to their self-esteem and helped to prevent deeper penetration into the systems.

In these instances, the social workers developed a meaningful relationship with the girls or young women, taking an interest in their lives, coming to know them as human beings and showing them genuine care. They shared how important it was that the social worker helped to support and manage familial relationships and took into account reasonable preferences (such as preferred clothing) when spending their DHS stipends. The young women reported being happy because the social workers paid attention to them, developed a rapport and were kind—which they did not necessarily expect from them. Moreover, the social workers took the time to develop an ongoing presence in the participants' lives and thus, built a level of trust with a continuous, constant relationship that was uninterrupted by switching workers. Having these types of relationships may reduce the presence of girls and young

women in the systems as they are able to discuss their lives, personal struggles and get support. Typically, these girls and young women may have experienced having a safe 'space' where they could freely express their views ('voice') to their social workers, have them taken seriously ('audience') and accounted for ('influence').

Nevertheless, it should be noted that the social workers were positively regarded by the participants because they viewed them as interested in their lives and treating them with kindness, care and love, which they deserved as human beings. At the same time, they did not generally encourage the girls or young women to contribute to making decisions about their lives as set forth under the CRC, Article 12, General Comment 12 and Lundy's model. In these cases, the social workers were dedicated, interested and clearly had good intentions, but there were serious issues of training and wider awareness about child participation in decision making processes that needed attention. In other words, the young women appeared to have meagre expectations for personal attention with their social workers, as opposed to having meaningful engagement to contribute to decisions about their lives and destinies. In these instances, there were not concerted efforts or protocol to ensure the girls and young women had a right to freely express their views ('voice') including to have sufficient, age-appropriate information given to them so they could take time in a safe 'space' to understand how they could contribute to decision making about their lives and then do so. Likewise, they did not expect to have their views given 'due weight' in decision making processes, much less have an expectation that social workers and other adults give them serious attention as an 'audience' and be accountable to them for explaining decisions with feedback ('influence').

8.9 Young Women Who Praised Their Attorney Experiences

The empirical research revealed a number of young African American women who described positive experiences during child welfare and juvenile delinquent proceedings, although these were not necessarily related to having a 'right to freely express' their views and having them given 'due weight' in decision making, including having an 'opportunity to be heard' (Article 12). Primarily, the young women described positive experiences when their attorneys achieved good results in their cases. At times, it did seem to not matter to them whether they were fully

informed, expressed views or exercised the opportunity to be heard. One participant was involved in a serious case stemming from her having been a passenger in a vehicle which was stopped by police who located a concealed gun (RP 6). The young woman maintained that she had not known the gun was there and described how her attorney worked hard to learn about her life and present documents to the court which attested to her good character. She spoke of him having done “an awesome job.” He had all her transcripts, together with letters from her principal and teachers going back to primary school and from other responsible persons to present to the court. In addition, there were many family members and friends at the court hearing to support her. She explained that her attorney had shown her “whole background” to the judge and that he knew great detail about her: “he really did his homework.”

Nevertheless, whilst this attorney was able to get a favourable outcome (the judge dismissed her case), she only met with him in person very briefly whilst detained at the juvenile delinquent facility. As she did not recall in-depth conversations, she also expressed surprise that he knew so much about her at the hearing, bringing many documents supporting her good character to the court. Whilst this particular attorney’s presentation before the court accurately informed the judge about this young woman, the attorney did not ensure beforehand that she was fully informed and understood her case; she also did not indicate freely expressing her views or realising she had an opportunity to be heard (‘voice’). Whereas the outcome was favourable because of his skill and the strength of supporting documentation, in other cases a lack of information could lead to very different outcome. The attorney-client relationship is designed in order to review the facts of the case, to develop an effective defence and to present options to the client so she is able to make choices about her legal representation, as well as describe her version of the case. In this way, she can freely express her views (‘voice’) albeit also understanding the full consequences of her choices and thus, be prepared if she choose to exercise her opportunity to be heard and to comprehend court orders regardless of case dismissal.

Had the judge found differently in the case of this participant, she would have been completely unprepared as the attorney had not explained the possible dispositions in which the judge may order court fees and fines, community service, probation and

even secure detention (which was possible given a delinquent adjudication in a concealed gun case). If the judge had imposed a disposition penalising her, moreover, she would not have had adequate knowledge to understand her due process rights, including the fact that she would have redress (the attorney files proper, timely notice with the appellate court to appeal the lower court ruling). It is important to recognise that despite the positive outcome, there is a need for an ongoing process in order to prepare a client in a safe 'space,' ensuring she is well informed about her due process rights and defence and can freely express her views and have a 'voice' if she chooses to be heard before the delinquent court judge.

Another research participant also described her satisfaction with the public defender for obtaining a successful outcome. She regarded his success in getting her a favourable sentence as coming from his ability to convince the court to work with her:

You know they don't throw you to the wolves, you know they try to work with you and see... Like you know, I am assuming that if I was a bad, bad kid with the whole... with the school, no doubt it maybe not much help, but because I was honor roll, it get into whole mother, father thing.

It was just like you know, judge: 'we can work with her and let's give her, just give her 24 hours community service.' Wow! That's decent, that's like a dang or something... I'm fine with that, yeah, broke it down, broke it down and it was good (RP 28).

As with the previous case, her public defender presented her as having good character in order to show she was not a 'bad kid.' He demonstrated to the court that she contended with parental issues and that she should be treated with dignity and worth. She acknowledged that her attorney had "broken down" the case by describing it to her and reflecting that position when asking the judge for a disposition. From her account, it seemed that her attorney had explained the case to her, and had therefore created an atmosphere ('space') where she could understand the court's disposition regardless of what the judge ordered and was able to handle the orders issued by the judge (although very positive here). In this instance, the attorney also spent sufficient time with the participant to indicate she understood the case ('space') and she was present and part of the process ('voice'). As a result she accepted the court's decision as decent, which gave her a sense of fairness about her

court proceeding and a respect for the process, which may potentially have encouraged compliance and reduced an ongoing presence in the system.

8.10 Conclusion

Broadly speaking, the American tradition allocates authority to parents when it comes to deciding how to direct the lives of their children and teenagers. This tradition fails drastically to support meaningful participation by children as rights-bearers and autonomous subjects (given they can freely express their views and be given 'due weight' to them), particularly when they are involved in the child welfare and juvenile delinquent systems. This tradition has further lent itself to allowing adults (whether parents or agents of the state) to continue side-lining or dismissing children and young people, including those who are already socially marginalised and excluded. Instead of creating 'spaces' to encourage their understanding of legal matters and preparing them to appear before the court if they choose this option, the contributions of young African American women involved in this study demonstrate how pressing the need to educate parents and agents of the state to help them incorporate children and young people into the decision making process. Moreover, the girls and young women themselves are often the only ones who can provide a full picture of their lives.

Overall, it is significant to understand that depending on how the social worker is obtaining information to satisfy administrative requirements, she may not necessarily receive a full account regarding the child's welfare and circumstances, including when called before the court to testify. It is further important to recognise when social workers appear before the court in child welfare proceedings, for instance, they may be questioned as to the needs and safety of the child and unless there are questions regarding the basis for obtaining information, the dates and times of visits, who participated in the conversations and the specific details, the court may not be apprised (unless there are other witnesses and/or exhibits (documents) submitted for admission as evidence before the court).

In these instances (and also in juvenile delinquent proceedings), the judge is relying on testimony and exhibits admitted into evidence in order to issue court orders that

bear upon the lives and destinies of these children and young people. Thus, if the girl or young woman seeks to have their views taken seriously ('audience'), it is crucial for their attorney to meet with them before the hearing in order to provide safe 'space' so they can freely express their views to him or her before the hearing ('voice'). It is also essential for this attorney to take proactive steps to ensure their opportunity to be heard before the judge (in the courtroom or chambers) so they know the judge hears their views and can give them 'due weight' when making decisions ('audience'). When issuing court orders, therefore, the judge can explain to them and give feedback to the girls and young women about how their views were taken into account in making decisions ('influence').

Otherwise, if the witnesses do not testify fully as to their status and/or if the evidence is not fully presented, the girls and young women could be overlooked in decision making and subject to judicial orders, which may not be tailored to the reality of their lives. Whereas the judge is perhaps the ultimate overseer in making decisions about them based on upon the testimony and exhibits presented before the court, the judge is also holding DHS and/or the juvenile delinquent system accountable for their actions. If, therefore, the girls or young women are not at the centre of these judicial proceedings, it is possible that, even given multiple layers of administrative supervision, there is potential for issues and problems—even major ones that result in adult incarceration and/or fatalities.

CHAPTER 9:

Conclusion—Ready for Overhaul

This thesis focuses on young African American women with past involvement in the child welfare and juvenile delinquent systems in America. Twenty-six young women, all located in Philadelphia, Pennsylvania, were interviewed for the research. Given the persistent tradition in the United States for generally attributing authority to adults in making decisions for and about children and young people, the research revealed a pressing need to revise law, policy and practice in order to allow children and young people an authentic role in the decision making which directly impacts their lives and shapes their destinies. Such reform would offer the prospect of reducing the presence of children and young people in the child welfare and juvenile delinquent systems and of limiting the duration of their involvement and/or regulating their penetration further into them.

The prevailing legal status of children in the USA is centred on a parents' rights-based approach to child participation in decision making. This approach is supported by well-settled federal constitutional law, which provides a relatively undisturbed right to privacy for parents in raising their children until adulthood. During the study, the young women described contributing (if at all) to decision making as well as confirming the typical exercise of professional adult power and authority (including the authority of the state where it has custody for children when a parent, legal guardian or custodian is unable to care for and/or control them). In child welfare hearings, each state has discretion about whether to extend a right to notice to children or young people that would provide an opportunity for them to be heard (in some states, the child is not a party to a court proceeding). In the juvenile delinquent system, individual states have leeway in granting due process rights to young people in court proceedings (not solely in the adjudicatory phase).

By contrast, the United Nations Convention on the Rights of the Child is buttressed by a child rights-based approach, which requires adults to engage children and young people in decision-making processes concerning their lives, particularly pursuant to Article 12. Indeed, a large body of scholarship has examined

participation for children, especially as it is associated with implementing Article 12 of the CRC, General Comment 12 and other related human rights documents. This discussion is largely generated by scholars outside the United States (shown in the bibliography herein), as the USA has not ratified the CRC.

The relevant scholarship to date provides useful models for implementing the participation of children involved in the child welfare and juvenile delinquent systems under the CRC, Article 12 and General Comment 12. This thesis primarily relies on Lundy's model of participation (Lundy, 2007). In terms of this model, this empirical research considers whether the young African American women had a safe place ('space') to freely express their views ('voice'), as well as whether their views were given 'due weight' by adults involved in decision-making processes ('audience'), with feedback about final decisions ('influence'). The key findings of the thesis regarding child participation are, therefore, linked to the salient research questions, which focused on the basis for (1) the overrepresentation in the systems of the young women who were interviewed, (2) their routes or pathways when entering, moving within and exiting the systems and (3) the types of systemic responses they experienced during their involvements in the systems.

Given the legal framework in Pennsylvania and the USA (see chapter 3), and considering responses in the extended interviews, it is perhaps unsurprising that the research revealed innumerable instances where the young women were denied opportunities to participate and/or had very limited meaningful influence on decision-making processes affecting their lives. The young women reported feeling passed over by DHS social workers, attorneys or other professionals, who seemed more interested in conversing with other adults than in engaging with the young women themselves, taking them into account, respecting their views and having them contribute to decision-making with feedback. The young women overwhelmingly perceived their own presence in the systems to be completely overlooked, at times leaving them feeling that their personal identity had been forgotten. In many cases, the young women had never shared their life narratives with anyone before. They were unheard.

The young African American women interviewed had faced many difficult, intense challenges in their lives, challenges that were characteristically related to surviving in highly deprived urban neighbourhoods blighted by gun violence. They were often exacerbated by problematic responses from the systems that were ostensibly designed and mobilised to ease their distressing circumstances. At the same time, it was clear that there are considerable hurdles for DHS social workers and other professionals in the United States to overcome *themselves* in order to provide an authentic role for children and young people to participate in decision making. It is likely that systemic reform could vastly improve their lives if the girls and young women became active participants as accorded by Article 12, General Comment 12 and Lundy's model of participation

9.1 Overview

Qualitative empirical research based on extended interviews with young women about their journeys within and across child welfare/juvenile delinquent systems is quite limited. Little is known from their perspectives about the nature of their lived experiences, how they describe their routes through both systems and how they conceptualise the underlying reasons for their involvement. In fact, many of the young women decided to participate in this research precisely in order to share their thoughts and feelings about how they were treated and how they felt when involved with child welfare and juvenile delinquent systems. Such qualitative interviews have provided distinctive insights into the daily lived experiences of African American girls and young women, as against quantifying studies that collect data about this population and conduct related statistical analysis.⁴³

Much of the available literature on the sociology of impoverished urban neighbourhoods helps to establish the influence of such environments upon impoverished lives of those who live within them. Lareau interviewed both African American and Caucasian families and considered how living in poverty can mean a

⁴³ To date, the academic debate in this area predominately focuses on studies designed to identify the profiles and risk factors related to girls' and/or young women's engagement with child welfare and juvenile delinquent systems. Studies of this kind generally support evidence-based and 'outcomes'-driven practices for improving the lives of the populations involved, including those of African American women (Bright, et al., 2014; Brubaker and Fox, 2010; Bright and Jonson-Reid, 2008).

daily grind in order to meet basic needs, focusing primarily on differences between poor/working-class families and middle-class families in terms of resources and negotiating systems (Lareau, 2002). Ness and Jones focused on young African American women and their struggles growing up in highly deprived and concentrated urban areas with prevalent gun violence and generally a sense of ever-present danger (Ness, 2010; Jones, 2009). Similarly, Jones and Anderson studied 'Codes of the Street,' where individuals must decide whether to address their predicaments outside or within formal law enforcement, criminal justice and corrections systems (Jones, 2009; Anderson, 1999). Indeed, the empirical research underpinning this thesis confirms the brutality of the environments considered in these studies. Several of the young women interviewed had lost family members and friends to gun violence, which was horrifying and catastrophic. One young woman found a parent who had overdosed days earlier and whose body was decomposing; another described her experience as a young girl when a woman was murdered in her foster care home; many of the women who were interviewed knew people who had been shot or murdered, some having directly witnessed such tragedies. The findings from the research interviews confirmed that participants who offended to survive in their neighbourhoods and schools then became involved in the juvenile delinquent system.

The available literature also offers important insights into the means by which African American girls and young women may be led to engage in aggression and violence (fighting) as a survival strategy when living in dangerous and precarious environments (Jones, 2009). The formidable urban neighbourhoods and schools in which nearly all residents are African American, together with the possible necessity that they will engage with violence ('delinquent acts') as a form of self-protection, help to explain the overrepresentation of African American girls and young women in both the child welfare and the juvenile delinquent systems. In fact, the girls and young women interviewed for this thesis often cited their reliance on aggression and violence as a survival mechanism or as a way to settle scores, protect their turf, demand respect and get by in everyday life (Jones, 2009).

These environments on a larger scale also severely affect the lives of young African American women. Historical and contemporary contexts that include stereotyping,

stigma and discrimination have led to the staggering overrepresentation of African Americans (particularly young men) within adult criminal justice and corrections systems, systems that have become characterised by mass probation/parole and mass incarceration (Goffman, 2014; Alexander, 2010). There is also a significant increase in the number of women, particularly minority women, who are incarcerated in the United States (McCorkel, 2013). Alexander has also studied the extent to which a felony conviction can substantially reduce, if not eliminate, employment prospects and undermine opportunities for exercising civil rights and normative public citizenship in the USA (Alexander, 2010). Two consequences of this reality is that: (1) African American girls and young women are growing up within families from which adult males are often absent (incarcerated or victims of fatal violence) and (2) their circumstances often expose them to intense 'observation, surveillance and scrutiny' by both child welfare agencies and law enforcement officials (Goffman, 2014; Alexander, 2010). The research conducted for this thesis confirmed the prevalence of such interferences in their lives.

The literature further shows how African American families can be stereotyped, stigmatized and discriminated against because they live in 'dysfunctional,' unmarried single-mother households with children who are born outside of marriage and who may have different biological fathers (Roberts, 2002). When the same families rely on public benefits to survive, African American mothers can be cast as 'welfare queens' (Ibid.; Zucchino, 1999). These women—living on low incomes in urban environments afflicted by multiple, entrenched forms of deprivation and violence—can be highly vulnerable to child welfare and child protection intervention on the basis of allegations of parental neglect (Roberts, 2002). Once the child welfare system intervenes in this way, the single black mother can be effectively weighed down owing to the litany of family service objectives that must be accomplished before she and her children are deemed suitable for discharge (Ibid.). Research findings in this thesis further indicated that once an African American mother became involved in the system, her children (principally daughters) can remain vulnerable to inter-generational DHS investigation. Young women who 'age out' of the child welfare system but whose mothers stay engaged because of younger siblings can also remain on DHS radar, especially if they have children of their own.

The interviews found that in such instances the young women often perceived DHS to be interfering with their family by threatening to break up, or by actually breaking apart their familial bonds and separating family members from one another. These disruptions in family structures can be especially significant where the young women have court involvements in which a judge adjudicates them as dependent or delinquent and places them in alternative care or secure detention. The research interviews revealed that when some girls or young women were frustrated and angered by living in alternative care or secure detention, they were also aggressive or violent. That behaviour then contributes to their removal from foster homes to another placement, or to longer stays in secure detention where there is further overrepresentation.

9.2 Lundy's Model: Space and Voice Poverty, Harsh Environments and Overrepresentation

Within the terms of the CRC, General Comment 12 and Lundy's model, research interviews for this thesis showed overwhelmingly that the young African American women did not typically engage in participation. In the interviews, the young women described first-hand the circumstances that precipitated their exposure to the child welfare and juvenile delinquent systems—the challenges of surviving in highly deprived urban neighbourhoods blighted by gun violence, for example, and of living in poverty with severely limited material resources. Yet DHS social workers and other professionals often failed to encourage the young women to describe their complicated struggles in those harsh environments ('voice') in a safe 'space' in order to participate in decision making. In fact, the interviews revealed that the young women's challenges were often exacerbated by problematic responses from the systems that were ostensibly mobilised to ease their distressing circumstances.

In many instances their attorneys also failed to give them the 'space' and 'voice' necessary to develop a level of rapport that would encourage them to tell their side of the story and air their views, factors that can be critical to building a compelling defence and thus for preventing harmful injustice. Had the girls and young women had an opportunity to be heard by their attorney and/or the judge, they may have felt

less embittered and upset, and potentially less likely to warrant further involvement based on re-offending, violating court orders and/or being held in contempt of court.

The research participants further showed a general lack of experience in interacting with professionals and a resistance to sharing details about their lives with institutional and government personnel; thus, there was a great need for professionals to encourage hearing their views in a non-threatening atmosphere. Because several of them felt suspicious about the intentions of DHS social workers, attorneys and other professionals, they were sceptical about letting their guard down and asserting a 'voice' in decision making. Typically, the research also showed how the behaviour of professionals can reinforce such feelings of ineligibility and, correspondingly, how feeling ineligible and not participating can enhance adults' power and ability to marginalise or exclude them. These are among the challenges for professionals, who *themselves* must understand that the girls and young women are surviving unbearable difficulties and contending with complicated problems, including those relating to systemic responses to their plights. In such ways the resistance of the girls and young women to sharing openly can potentially be linked to their resistance in complying with interventions, services, permanency planning and/or rehabilitation (including court orders).

If professionals provide a 'space' for young people to express their 'voices' and understand their plights (particularly helping them maintain their most important relationships), then it may be plausible to encourage other behaviours to address their needs, issues and concerns. Indeed, the empirical research showed how some of the young African American women contended with agony about their sense of belonging and attachment to their families regardless of child abuse, neglect and/or offending. Potentially, if the girls and young women feel a sense of fairness from their interactions when involved with the systems, it may also inform how to tailor interventions and services to discourage disrupting placements by running away and/or re-offending and encourage collaboration to sort out problems or identify another placement more suitable to meeting their needs or safety as part of the decision making process.

In this regard, it became evident from the research that there were young women who described having deep human attachments with adults who were foster or kinship caregivers (such as an aunt or grandmother) or foster mothers who became their legal guardian over several years. There were also young women who forged a tight bond with a dependable, kind DHS social worker where they built a lasting relationship without frequent switches in personnel. The empirical research tended to indicate that those young women who had an ongoing relationship with this kind of adult generally fared better than those who had suffered from losing their deepest human attachments where no adult was available to step in and take care of them. Some of the young women also mentioned outings for a meal or being picked up from school by a DHS social worker, which provided them with private time and personal attention for individual conversations with a person who took an interest in their lives and cared about asking how they were getting on (as opposed to, for instance, only inspecting a home for its safety and meeting basic needs). Overall, this key finding shed light on the role of participation and its relationship to reducing overrepresentation and minimising involvement in the child welfare and juvenile delinquent systems. Moreover, participation opened the door for a better chance for safe 'space' to express a 'voice' (although not necessarily as a primary approach or an essential part of the work of foster parents, social workers, residential staff in secure detention, attorneys and other professionals).

Whereas poverty can result in actual engagement and interaction with child welfare and juvenile delinquent systems, it can also serve as a barrier for children desiring participation in decision making once surrounded by professionals representing the systems. Participants placed in alternative care, for example, mentioned feeling bad when not having such clothing as name-brand tennis shoes ('nice stuff'), which potentially meant feeling left out or rejected because of their poverty (Ridge, 2011; 78). The girls and young women clearly understood that DHS provides a financial subsidy to the foster parent for their care and a stipend for their clothes, yet some of the young women questioned how the caregivers spent the money, particularly when their own biological children had name-brand clothes and attended private schools whilst they were treated as 'less than.' Thus, also in relation to decision making about finances, it became evident that the young women needed a safe 'space' to talk with a professional in order to participate and have a 'voice.' One participant particularly

liked the DHS social worker who supported her preferences for clothes (as opposed to her grandmother's choices), again indicating the difference participation of this kind can make in their lives, particularly if they understand realistically how DHS can acknowledge and accommodate their preferences by including them in decisions about their needs for clothing, school supplies, electronics and recreation. In addition, a participatory approach may discourage retail theft and other offending as it offers a significant alternative to their becoming involved, and overrepresented, in the juvenile delinquent system.

9.3 Lundy's Model: Audience, Influence and Systemic Responses

In addition to their scepticism about the professionals' understanding, sincerity and sense of fairness in creating 'space' and giving them an authentic 'voice' in decision making about their lives, a number of the young women noted the failure of DHS social workers, attorneys and other professionals to forge human relationships with them, to seriously consider their views ('audience') or account for their voices in decision making ('influence') with feedback. Therefore, professionals *themselves* potentially face challenges in appealing to the girls and young women as an 'audience.' At the same time, the DHS workers and other professionals sometimes side-lined the girls and young women, failing to hear their voices in tailoring ways to meet their basic needs including preparing them for any interruption or termination in placement, interventions, services and/or rehabilitation. The research findings showed that systemic responses were often ineffective when the professionals did not take the young women seriously as 'audience' and were unaccountable for feedback about final decisions. They felt, instead, that the professionals involved with them were merely satisfying administrative requirements.

The need of the research participants for an understanding 'audience' among professionals within the systems cannot be overstated. As noted, many of the participants had deep human attachments to their biological mothers, even after judges made factual findings of child abuse and neglect and issued adjudications of dependency and dispositions for the children and young people to be committed to state custody and placed in alternative care outside the home. Many research participants in these instances felt that DHS had taken them from their mothers and

put them away in out-of-home placements. These participants viewed these government personnel with resentment and antipathy, particularly when they already perceived DHS as having this reputation. Further, they perceived DHS as regarding their mothers as 'bad mothers' as opposed to their being women struggling with grim, complicated problems. In effect, some of these young women perceived DHS was punishing their mothers by removing them from the home, placing them with strangers and, in some instances, not arranging or inconsistently providing for visitation with their mothers and siblings. In fact, some life narratives showed that some of the young women became much more emotionally distressed and anxious—sometimes 'acting out'—in cases where young women perceived DHS social workers, attorneys and other professionals as not seeking to preserve their maternal and/or sibling bonds; they were not taking the young women's needs seriously as an 'audience' who understands and can work with them effectively to address their situations and give them feedback.

In many instances the young women's narratives pointed to 'trauma' as an underlying basis for their involvement in child welfare and juvenile delinquent systems. The research findings revealed how traumas—often related to a sense of loss or abandonment—gave rise to deep emotional injuries that further impacted their lives. In these instances, the research offered significant insights into the ways DHS interventions in separating a child from her mother (which then has the effect of further involvement in the systems) could represent an additional 'traumatic event,' as opposed to DHS social workers, attorneys and other professionals taking the girls and young women seriously ('audience') and including them in decision making about the important relationships in their lives. Perhaps DHS social workers, attorneys and youth offending workers may perceive the girls and young women in terms of their parents' child abuse and neglect or as youth offenders who are breaking the law. In any case, some of the young women perceived the systems as compounding rather than alleviating their troubles, and they expressed having felt that, as children or teenagers, they were losing their sense of identity and belonging as these systems created suffering and at times agony by disrupting their family lives. Here again, the child welfare and juvenile delinquent interventions and services at times exacerbated, perpetuated and reinforced problems, effectively re-victimising the 'victim.'

The narratives of some of the young women indicated that the failure of systems to understand the origins of their 'troubles' produced distorted responses. Their troubles frequently originated in bereavement, in profound grief and loss—often from the death of a primary caregiver. In some instances, this sorrow ultimately expressed itself in aggression and/or violence. The original 'trouble' (bereavement) may have necessitated a child welfare response, but the practical manifestation of the same 'trouble' (aggressive and/or violent conduct) attracted the attention of the juvenile delinquent system. Again, the failure of DHS and youth offender workers and attorneys meant generally that no professional understood, based on the young women's life stories, how to take them seriously and account for their views in decision making and give feedback. Overall, the lack of first-hand information from the girls and young women meant that the DHS or youth-offending social workers, the attorneys and other professionals with a stake in decision making relied on their own views to determine what responses would best suit the girls and young women. Failure to include them as integral participants in these decisions leaves ample room for error in tailoring responses to meet their needs and provide for their safety. It is worth noting the resistance of the girls and young women to government personnel who they felt were imposed upon them and who, further, were unavailable or unwilling to forge relationships with them as human beings. This resistance could potentially result in longer and deeper penetration into the systems, whereas social services interventions could have addressed the underlying trauma and reduced further engagement with them.

Research results further revealed that the immediate responses to some of the young women by law enforcement officers were similarly harsh, particularly when the young women were pre-adolescents. Although they may have behaved aggressively, their anger and rage reflected deeper underlying troubles. A municipal government may require the probation department to apprise the girl or young woman of her statutory or constitutional rights upon apprehension, yet the research findings generally indicated treatment that appeared unlikely to create safe 'space' for conducting interviews that would identify appropriate social services, or even for ensuring the attention of social services at all.

9.3 Recommendations

Overall, the young African American women with past involvement in the child welfare and juvenile delinquent systems faced many difficult and intense, if not debilitating, experiences during their childhood and teenage years. This thesis shows how the nature of government institutions and professional bureaucracy often left the young women feeling that systemic responses were mechanistic and lacked in human connection, thoughtfulness and/or compassion. In other words, the current child welfare and juvenile delinquent systems do not typically offer children and young people a safe 'space' to freely express their 'views' and have them taken seriously, with feedback on final decisions. This failure generally characterises the social norms and intentions underlying law, policy and practice as to the role of the child and her rights to participate in decision making. Indeed, some DHS social workers, attorneys and other professionals routinely glossed over details about the young women's lives and typically ignored them. Many of the young women observed that DHS social workers sought to ensure 'accountability' and 'transparency' in the systems in order to satisfy administrative requirements. By contrast the research participants' deepest needs generally hinged on ongoing relationships that prioritised human connections and attachments over monitoring and tracking human beings.

The most extreme losses of connection and attachment experienced by some participants involved their abrupt, harsh removal from the home, their languishing in foster care or other types of placements, leapfrogging between multiple placements and/or not having consistent private phone calls and/or visits with their family members, if desired. Further, the research findings included complaints by young women who had reported that actual caregivers were perpetrating further child abuse and/or neglect, or were allowing other persons to engage in it (failure to adequately supervise) and having their reports ignored or not believed when they tried to get attention about being exploited. Mistreatment was particularly pernicious regarding sexual abuse and/or foster parents' favouring their own children over the needs of the foster children. In fact, the research pointed to cases where caregivers or people connected to them had been taken into custody, were prosecuted for alleged child abuse and/or neglect, and were convicted and sentenced in the juvenile delinquent, adult criminal justice and/or corrections systems. For these reasons, too, it is

imperative that children and young people be granted *space, voice, audience* and *influence* in procedures designed to prevent them from suffering further harm.

A finding that a lack of understanding by personnel associated with the systems can result in further trauma and perpetuate emotional pain is important given the facts of the lived experiences of the research participants, who struggled to survive and cope emotionally within social and economic circumstances that were significantly beyond their direct control. The empirical research contributes insights about the nature of trauma and the mechanisms that link it to the overrepresentation of African American girls and young women in the child welfare and juvenile delinquent systems. Moreover, the complex patterning of structural, familial and individual trauma revealed in these interviews goes some distance in explaining the dire need—and great opportunity—to reduce overrepresentation of African American girls in child welfare and juvenile delinquent systems through avoiding thoughtless and distorted systemic responses. Systemic responses that failed to acknowledge, assist or accommodate the young women by addressing their underlying problems with understanding, consideration and empathy were met at times with anger and even violence, contributing to overrepresentation and “messy” routes taken by the young women within and across the child welfare and juvenile delinquent systems, as well as longer and deeper penetration into them.

The research findings showed the girls and young women were vastly concerned about their families and desperately wanted professionals to ease their separations with updates, reports and consistent, regular, ongoing access to phone calls and visits with their families. Typically, the research participants also did not participate in arranging with the professionals about how they would like to have contact (if offered at all) or indicate what they would like to talk about, much less what type of ‘space’ would work for them in order to participate in decision-making processes. There was clearly a need not only to identify a range of contexts in which to facilitate participatory relationships between adults and children, but also overall to have DHS social workers, attorneys or other professionals encourage the girls and young women to give voice to their views, share details about their lives and engage in decision-making processes where they get feedback about final decisions. Accordingly, these findings lead to the recommendation that one adult

professional—such as a DHS social worker and/or attorney—should be the “go to” person who is available for an ongoing, full-time relationship with a girl or a young woman as she moves within and across the child welfare and juvenile delinquent systems. In this way, the girls and young women have one trained professional available for advice and guidance in negotiating their difficult and sometimes chaotic lives.

Law, policy and practice generally do not reach as far into personnel matters as to propose this type of relationship within these systems, especially given that the United States has not ratified the CRC. For instance, the new DHS guidelines for the ten Community Umbrella Agencies (CUAs) indicate that multiple professionals, from aides to case managers, are to visit foster homes, but it is not clear whether one ongoing, trained social worker maintains regular, continuous personal contact with the child or young person. It is also unclear from the guidelines as to professional responsibilities for building a relationship with young clients and establishing a level of trust that allows them to participate in decision making about their lives.

Some of the girls and young women interviewed also had simultaneous involvement with both the child welfare and juvenile delinquent systems; their 'fluctuating' within these systems is addressed to some extent by 'crossover' research (discussed in chapter 3).⁴⁴ The Center for Juvenile Justice Reform at Georgetown University is a leading non-profit organisation that has developed the Crossover Youth Practice Model in an attempt to improve practice within and between these systems, and so to catch the crossover youth in order to minimise their contact with them, particularly their progression from the child welfare to the juvenile delinquent system. Although the work of the Center for Juvenile Justice Reform is valuable, the empirical research underpinning this thesis contrasts with its 'top-down' approach, which focuses on multi-system coordination, collaboration and outcomes, and rather adopts a 'bottom-up' approach that privileges girls' and young women's experiences and understandings of their entry to, their movement within and across, and their exit from both child welfare and juvenile delinquent systems. In this sense, the empirical research is distinctive in that it examines the nature of the systems based upon

⁴⁴ The thesis includes several studies in this area (Huang, Ryan, Herz, 2012; Herz, Lee, Stewart, Tuell, Wiig, 2012; Herz, Ryan, Bilchik, 2010; Conger and Ross, 2006; Conger and Ross, 2001).

qualitative data drawn from lived experiences rather than from the perspectives of professionals deciding what is 'best' for children and young people as 'validated' by recourse to 'macro' quantitative data. Indeed, the research findings here indicate that there was not a typical pattern of girls' and young women's progression from the child welfare to the juvenile delinquent system. Instead, their routes were 'messy,' and systemic responses could exacerbate their situations, including prolonging their presence in these systems and contributing to further overrepresentation.

The attitude of a designated DHS social worker, attorney or other professional is centrally important in forging relationships with girls and young women involved with the systems. Some young women felt vulnerable and sensitive to professionals passing judgment on the people who matter most to them; in some instances, they were inclined to retreat or withdraw from engaging in conversation, much less to feel a sense of safety that encouraged them to freely express their views and have their concerns taken seriously by adults. Other participants felt afraid to reveal their thoughts and feelings because the people and institutions responsible for the upheaval in their lives were perceived as intrusive and untrustworthy, particularly in seeking details about how their mother took care of them and their siblings. There were girls and young women who also feared betrayal if they shared details about their families, that it could potentially further expose them to the involvement of government systems. There were also young women who perceived themselves to be treated without a sense of fairness, including feeling they could not air their side of the story and secure their due process rights in the juvenile delinquent system. Providing a safe space may encourage girls and young women to offer their views. Should they perceive professionals to be engaging in a ruse; however, additional challenges would have to be overcome before a trusting relationship could develop.

The empirical research results clearly show that professionals should be open to how girls and young women choose to tell stories about their lives ('voice'). They may want to address several specific topics, from small preferences about how they want to define and organise their daily routines to describing their full stories and expressing the contours of their emotional pain and suffering. Further, in telling their narratives, the girls and young women may not chronologically describe their reality. It was evident from the interviews that the young women often homed in on a

particular part in their life that they sought to describe, wanting to do so without interruption by adults injecting their opinions or telling them what to do. Some young women wanted a person to listen to how they felt treated when involved in the systems. They sought empathy and compassion for their thoughts and feelings and also a role in deciding how to manage them and get action, support and/or redress to make changes when needed. It was understandable, therefore, how narrating one's own life (which can also be shown through non-verbal movements, toys, pictures, plays, conversations, journaling) can take many forms. Professionals are well advised to be alert to these variations so that girls and young women can freely express themselves, have 'due weight' given to their views and get feedback as they participate in the entire decision-making process.

These professionals ought to have done their homework and have prepared for meeting with the girls and young women by knowing about their lives and what is important to them. This preparation may include knowing their names and small details about their lives as well as the names of people that they identify as important in their family and kin network. These professionals could also enhance their credibility by checking in regularly, giving detailed updates and answering questions in a straight forward manner when asked, as well as following through with promises and ensuring the young women's familial relationships are sustained through regular, on-time, consistent visits. The girls or young women also need information for emergencies to address problems, especially with a foster care parent and/or placement provider, and information for making informed decisions on a regular basis. If they would like to meet privately with the professionals, then they should have regular opportunities to get involved, even at very early ages, and be granted 'space' to do so.

Last, there is a pressing need for the girls and young women to have the opportunity to be heard in judicial and administrative hearings so that their views can be included along with those of the parties, representatives and witnesses appearing before the court (including ensuring through legislation that they receive notice for child welfare court hearings). The research findings showed in numerous instances that the girls and young women were either not informed or were retrospectively informed, but not by the actual decision makers. They were also not provided with notice of

hearings (whether formal or informal) and, most important, they were denied opportunities to freely express themselves and have their views given 'due weight.' It is particularly important to provide children and young people with reliable counsel and meaningful (accessible) information and to hear their version of events (their 'voices') for purposes of judicial decisions that often can have profound effects on their futures. The nature of the attorney-client relationship should be client-directed representation, which means that the client directs the legal representation: 'due weight' is given to the views of the child according to her age and maturity. In this attorney-client relationship the adult can regard the child as a bearer of human rights and an autonomous person by listening, taking seriously and respecting her views as an 'audience' and providing advice and guidance so that they can effectively participate in child welfare and juvenile delinquent proceedings which are, after all, about them (General Comment 12, Lundy, 2007).

Overall, there is a need for a paradigmatic shift from adult authority in raising children toward a participatory view that focuses on listening, taking seriously and respecting their views as a key plank of decision-making processes in the United States. There is a need to confront fears about, and resistance to, children as rights bearers who should have safe 'space' to freely express their views, have their views given 'due weight' according to age and maturity (and evolving capacities) and to have an opportunity to be heard in child welfare and juvenile delinquent proceedings. The research findings in this thesis point to a dire need for a new approach and framework for children and young people involved with the child welfare and juvenile delinquent systems in the United States. This new approach is supported by the research findings and Article 12 of the United Nations Convention on the Rights of the Child, its related documents and Lundy's model of participation. At this time, DHS social workers, attorneys and other professionals have little to no experience with implementing this approach or adopting a framework where they cannot opt out of including children and young people as having rights to participate in decision making. Thus, one of the main contributions of this thesis lies with its capacity to inform professionals operating in these systems in the USA about the implications and consequences regarding the need for genuine child participation in order to reduce overrepresentation and eliminate or shorten their presence in the child welfare and juvenile delinquent systems. It is time for the United States to

ratify the United Nations Convention on the Rights of the Child and to bring law, policy and practice into a child rights–based paradigm for America.

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⁴⁵ The Philadelphia Female Detention Project Study is currently unavailable online or in print. This publication, and those unavailable pertaining to it, can be obtained from Professor of Law Sandra Simkins of Rutgers University.

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42 U.S.C. § 671 et seq. Adoption Safe Families Act of 1997. Pub. L. 105-89

42 U.S.C. § 671 et seq. Title IV-E. Social Security Act of 1935

42 Pa.C.S. § 6301 et seq. Juvenile Act. Pub. L. 202. June 1978

45 CFR 1356. Code of Federal Regulations, Requirements Applicable to Title IV-E. Department of Health and Human Services. U.S. Government Printing Office.

APPENDIX 1: Brochure

Why am I doing this study?

My research explores young African American women's rights and experiences in the child welfare and youth offending systems.

One of the best ways of achieving this is to talk directly to young African American women who have been in these systems.

Your experiences will enable me to make suggestions as to how the systems might be changed to better protect the rights of young people in the future.



Margaret Iken
Doctorate (PhD) Researcher
University of Liverpool
England, United Kingdom

I am working for my doctorate degree in the field of law and social justice at the University of Liverpool, England. Previously, I worked for several years in child welfare in Philadelphia. So I can tell to young African American women in the city.

CALL FOR PARTICIPANTS IN A RESEARCH PROJECT

Would you like to share about your experiences of the child welfare and juvenile justice systems?

Your participation can help us to understand how these systems work and to suggest how they might be changed.



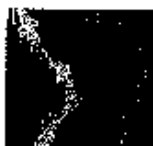
UNIVERSITY OF LIVERPOOL

What does the research involve?

- I am interviewing young African American women who have past experiences in the child welfare and youth offending systems and are 18 to 25 years old.
- The interview involves general questions, asking you to talk about your life story in these systems.
- The interview will take place in a quiet public space such as a library or organisation's common during its business hours.
- The interview length will range between 45 to 60 minutes to enable you to participate in the interview.



Telling your life story is important to understanding the child welfare and youth offending systems in America and human rights for children globally.



What will you do with the interview material?

The interview notes will illustrate the points about how the child welfare and youth offending systems work based on the life experiences of young African American women in my interview study. The doctorate thesis is similar to a book.

Please kindly note that all interview data are confidential and any fact you don't identify you personally (name or other personal details) will be said in general or anonymous.

What should I do if I want to join you?

You can contact me directly by phone or email.

267-205-7553

am.iken.02@liverpool.ac.uk

APPENDIX 2

INTERVIEW SCHEDULE

Demographics:

Who do you consider raised you?

Who did you live with?

Who were the important people in your life? [more than one stage]

What do you remember about your family [multiple meanings]?

Who were your friends? [more than one stage] How did you spend your time together?

What was your experience with school?

Child Welfare/Juvenile Delinquency Systems:

Do you remember the first time you learned about the system/social workers?

Do you remember when you first became part of the system?

What happened when the system became part of your life?

[how long, timeline, in/out of system, examples, routines, incidents]

How did you feel about your experiences in the system?

What did you like/not like about the system?

Who were the people in the system you remember [told you what to do]?

How did you feel about them?

How do you feel that you were treated [discriminated against or labelled]?

How did you feel that they viewed you?

Who did you consider in the system that listened to you?

Were you able to talk about your thoughts and feelings with them? What happened?

Looking back, how do you feel the child welfare and juvenile delinquent system affected you?

Concluding the Interview:

Is there anything else that you want to tell me?

Are there any questions that you want to ask me?

APPENDIX 3



INFORMATION SHEET

Title of Study

Exploring the 'Messy Boundaries' between the Child Welfare and Juvenile Delinquent Systems in the USA through the Life Narratives of Young African American Women

Invitation to Participate

You are being invited to participate in a research study. Before you decide whether to participate, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and feel free to ask if you would like more information or if there is anything that you do not understand. Please feel free to discuss the information with your friends, relatives and/or physician if you wish. You do not have to accept this invitation and should only agree to take part if you want to.

What is the Purpose of the Study?

The purpose of the study is to explore the involvement of young African American women with the Child Welfare and Juvenile Delinquent systems in the USA.

Why have I been chosen to take part?

You have been chosen to take part in the study because you have had previous involvement in the Child Welfare and Juvenile Delinquent systems in the USA. There will be 25 participants in the study who have been contacted to participate in this study.

Do I have to take part?

- **No, participation in the study is entirely voluntary and you are free to withdraw at any time without explanation and without your rights being affected.** Any information received before your withdrawal will be destroyed and not included in the study upon your request.

What will happen if I take part?

The study is being conducted by a Student Investigator, Margaret Fine who is a post-graduate doctoral based in the Department of Sociology, Social Policy and Criminology at the University of Liverpool in England, Great Britain. It will take place in a secure location in Philadelphia over a period of about two hours. Margaret lived in Philadelphia for many years before she came to England.

The study will take the form of general interview questions; this will involve you talking about your life stories in the child welfare and juvenile delinquent systems. The research study interviews will be audio-recorded unless you ask for your interview not to be recorded. It is important to recognize that if you feel uncomfortable or distressed about sharing information, you do not have to talk about it.

Will my expenses be met? Will there be a payment for participation?

There is no payment for taking part in the study. You will be provided with bus tokens and refreshments to enable you to take part in the study.

Are there any risks in taking part?

The personal nature of the interview topics may potentially cause some emotional discomfort to the participant. It is important to recognize that if you feel uncomfortable or distressed about sharing information, you do not have to talk about it. If you experience any discomfort or disadvantage as part of the study this should be made known to the student investigator immediately.

Are there any benefits in taking part?

While you personally may not experience any immediate, direct benefits, you will be contributing to our understanding of how the child welfare and juvenile delinquent system affects young people.

What if I am unhappy or there is a problem?

If you are unhappy, or if there is a problem, please feel free to let the student investigator know by contacting Margaret Fine on 215 253 6505 (Philadelphia local number) (mcfine01@liv.ac.uk) and she will try to help. Please also feel free, if you are unhappy or have a problem, to contact the supervisors of this research study: Professor Barry Goldson and/or Dr. Helen Stalford of the University of Liverpool, England, of the United Kingdom (B.Goldson@liv.ac.uk, ++44 (0)151 794 2977). If you remain unhappy or have a complaint which you feel you cannot come to the student investigator with then you should contact the Research Governance Officer on +44 (0)151 794 8290 (ethics@liv.ac.uk). When contacting the Research Governance Officer, please provide details of the name or description of the study (so that it can be identified), the student investigator(s) involved, and the details of the complaint you wish to make. Arrangements will be made for you to have a private, international call.

Will my participation be kept confidential and what will happen to the results of the study?

Only the student investigator and the primary and secondary supervisors will hear your interview and/or read your transcript without your written permission. You can ask for access to your research information at any time. You can request the destruction of this information and it will be destroyed. Research study information is held secure during the research study and afterwards in line with University of Liverpool procedures and policies.

The research study is part of a written thesis due by 1 October 2015. The information provided by you may be quoted in the thesis. It is the policy of The University of Liverpool that your name and identifying information be kept anonymous and confidential here.

- **Please note, not all Information is Confidential.** Some information involving child protection (abuse and neglect) and illegal activities cannot be ensured confidentiality. There are mandatory, legal reporting requirements if certain kinds of information are disclosed.

Will my taking part be covered by an insurance scheme?

Yes, participants taking part in a University of Liverpool ethically approved study will have cover.

What will happen if I want to stop taking part?

- **Participants can withdraw at anytime, without explanation.** Any information received before your withdrawal will be destroyed and not included in the study upon your request.

Who can I contact if I have further questions?

If you have questions about your participation in the study, you can contact the Student Investigator, Margaret Fine on 215 253 6505 – Philadelphia local number (mcfine01@liv.ac.uk).

APPENDIX 4



CONSENT FORM

Title of Research Project:

Exploring the 'Messy Boundaries' between the Child Welfare and Juvenile Delinquent Systems in the USA through the Life Narratives of Young African American Women

Please sign and date two copies of this consent form.

1. I confirm that I have read and have understood the information sheet dated [DATE] for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

☐

2. I understand that there is a duty to report child welfare issues where a suspicion of child abuse and/or neglect exists and/or there is reason to believe existing child abuse and/or neglect if disclosed. I understand that there is a duty to report illegal activities if disclosed.

☐

3. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without my rights being affected.

☐

4. I understand that, under the Data Protection Act, I can at any time ask for access to the information I provide and I can also request the destruction of that information if I wish.

☐

5. I agree to take part in the above study.

☐

The Student Investigator, Margaret Fine, will also sign and date both copies.

One form will be available for your records and the Student Investigator will keep one for her records.

Research Participant

Date

Signature

Student Investigator

Date

Signature

The contact details of the Student Investigator are:

Margaret Fine

mcfine01@liv.ac.uk

Philadelphia local number: 215 253 6505

Liverpool, England mobile number: ++44 (0)7530667844

The contact details of the Supervisor of this study are:

Professor Barry Goldson

B.Goldson@liv.ac.uk

++44 (0)151 794 2977

APPENDIX 5



DEBRIEFING MATERIAL

PURPOSE

Thank you very much for participating in this research study. You have participated in a research study that focuses on the life stories of African American young women and your unique perspectives during engagement, movement and exit from the child welfare and juvenile delinquent systems in the United States. Your participation in this study is important because your experiences tell us about your needs and what it is like to be involved in the systems.

CONFIDENTIALITY

Your participation in the research study is voluntary and you can withdraw at any time. Further, you can at any time ask for access to information that you provide as a research participant in the research study. You can request the destruction of the information that you provide as a research participant in this same study. Please contact the Student Investigator and provide your written notice to cease your participation.

Research study information is held secure during the research study and destroyed (including transcriptions and audio-tapes) afterwards. The research study is a written thesis due on 1 October 2015. The research study information provided by a research participant may be quoted in this thesis. The University of Liverpool requires that your name and identifying information be kept anonymous and confidential and not contained in the final thesis submission.

CONTACT INFORMATION

If you have research study questions before, during and/or after your research interview, please contact the Student Investigator at the following email address: mcfine01@liv.ac.uk or alternatively by phone on the following numbers: Philadelphia local number: 215 253 6505, Liverpool, England mobile number: ++44 (0)7530667844 (This email is checked on a regular basis and a response will usually be given within 48 hours during business hours (9 am to 5 pm) from Monday through Friday).

Please also feel free, if you are unhappy or have a problem, to contact the supervisors of this research study: Professor Barry Goldson and/or Dr. Helen Stalford of the University of Liverpool, England, of the United Kingdom

(B.Goldson@liv.ac.uk, ++44 (0)151 794 2977). If you remain unhappy or have a complaint that is unresolved, then you can contact the Research Governance Officer ++44 (0)151 794 8290 or ethics@liv.ac.uk). In the same regard, you will be provided with contact information and assistance upon request in order to ensure that you are properly able to communicate with them.

Below is a list of organizations that you may find of assistance following your participation in the study. Please kindly note that the student investigator does not have any affiliation to them.

LIST OF SUPPORT SERVICES

Citizens Acting Together Can Help (CATCH)
Adult Clinic, 1400 Reed Street, Philadelphia, PA, 215-735-7435 (main office)

COHMAR (Community Organization for MH/MR, Inc.)
100 West Lehigh Avenue, Philadelphia, PA 19133, 215-203-3000

Consortium, Inc.
Adult Mental Health Services, 215-748-8400
451 South University Avenue, Philadelphia, PA 19104, 215-596-8000 (intake)
3801 Market Street, #201, Philadelphia, PA
26 South 40th Street, Philadelphia, PA
and
Southwest Counseling Center
6408 Woodland Avenue, Philadelphia, PA
215-596-8163 (general), 215-596-8000 (intake)

Community Counsel for MH/MR
4900 Wyalusing Avenue, Philadelphia, PA 19131, 215-473-7033

Dr. Warren E. Smith Health Centers (multiple centers)
100 West Lehigh Avenue, Philadelphia, PA 19133, 215-226-7100

Hall-Mercer Community Behavioral Health Center
(affiliation with University of Pennsylvania)
245 South 8th Street, Philadelphia, PA 19107, 215-829-5433

Intercommunity Action, Inc. (Interac)
6012 Ridge Avenue, Philadelphia, PA 19128, 215-487-1330

John F. Kennedy Community MH/MR Center
112 North Broad Street, Philadelphia, PA 19102, 215-568-0860

Joseph J. Peters Institute
100 South Broad Street, 17th Floor, Philadelphia, PA, 215-701-1560
The organization is a mental health agency providing outpatient assessment and treatment services in the area of sexual abuse.

Northeast Community Center for MH MR
Roosevelt Blvd & Adams Ave, Orleans Building, Philadelphia, PA, 215-831-2863

The Attic Youth Center, 255 S. 16th Street, 19102, Philadelphia, PA, 215-545-4331
The organization is the entity exclusively serving LGBTQ young people in Philadelphia and provides programs and activities including counseling.

Emergency Services Hotlines:

Pennsylvania Suicide and Crisis Intervention Hotline, 215-686-4420

The trained suicide/crisis intervention staff provide counseling, consultation and referral for people seeking assistance for immediate mental health needs.
Intellectual Disability Services Emergency Line, 215-829-5709
After 5 p.m, 215-685-6440

Crisis Response Centers for Emergency Treatment:

Einstein Crisis Response Center at Germantown
Germantown Community Health Services
One Penn Boulevard, Philadelphia, PA, 19144, 215-951-8300

Friends Hospital Crisis Response Center
4641 Roosevelt Boulevard, Philadelphia, PA, 19124, 215-831-2600

Hall Mercer Crisis Response Center
245 S 8th Street, Philadelphia, PA, 19107, 215-829-5433

Temple University/Episcopal Crisis Response Center
100 East Lehigh Avenue, Philadelphia, PA, 19125, 215-707-2577

Mercy Hospital Crisis Reponse
5401 Cedar Avenue, Philadelphia, PA, 19143, 215-748-9525